16-605

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 887.

GEORGE WEETH AND ANN WEETH, APPELLANTS,

vs.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED JULY 24, 1886.

SEC. 2. All acts and parts of acts inconsistent with this act are hereby repealed, but such repeal shall not affect any bonds that shall or may have been heretofore issued.

SEC. 3. This Act shall take effect and be in force from and after its passage.

Approved March 9, 1874.

Surely, if in the opinion of the Legislature, the Act of 1868 had already been abrogated by the Act of 1870, it would hardly have taken pains to expressly repeal the former act so late as in the year 1874.

The learned counsel for the plaintiff in error insists that the action of the Legislature in making this repeal amounted to no more than a mere expression of its opinion.

But if such were the case, the expression by such a body of its opinion upon such a subject, would be treated by the Court as almost, if not quite conclusive.

The learned counsel discusses several other points in his brief, at great length; all of them, however, go for nought, if the Act of 1868, was yet in force when the bonds in suit were issued.

That the Act of 1868 was then in force, is beyond a doubt.

The Court will not therefore be troubled with discussion on the part of the defendant in error of the other points raised by the learned counsel, for plaintiff in error. The bonds sued on were valid, and the judgment of the Circuit Court should be affirmed.

W. P. CLOUGH.
E. G. ROGERS,
Counsel for Defendant in Error.

16-605

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 887.

GEORGE WEETH AND ANN WEETH, APPELLANTS,

vs.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED JULY 24, 1882.

1 Pleas before the honorable George W. McCrary, judge of the circuit court of the United States, in and for the eighth judicial circuit and district of Nebraska, and the honorable Elmer S. Dundy, judge of the district court of the United States, for the district of Nebraska, sitting in said circuit court, at the term of November, 1881.

Be it remembered that on the 12th day of December, 1879, a bill in equity was filed in the clerk's office of the said circuit court, which said bill is in words and figures following, to wit:

In the circuit court of the United States, district of Nebraska.

THE NEW ENGLAND MORTGAGE SECURITY Company *vs.* GEORGE WEETH, ANN WEETH.	In chancery.

To the honorable the judges of the circuit court of the United States aforesaid:

The New England Mortgage Security Company, resident of, in the county of Windham, in the State of Connecticut, and citizens thereof, being a corporation duly organized and existing under the laws of the State of Connecticut, brings this bill against George Weeth and Ann Weeth, residents of , in the county of Sarpy, in the State of Nebraska.

And thereupon your orator complains and says that the complainant and respondents above named, are residents and citizens of the several places hereinbefore mentioned, and that the matter in controversy in this suit exceeds the sum or value of five hundred dollars, exclusive of costs.

Further, your orator avers that heretofore, to wit, on the 18th day of May, A. D. 1876, the said George Weeth, for a valuable consideration, made and delivered unto The New England Mortgage Security Company his certain promissory note, whereby he undertook and promised to pay unto New England Mortgage Security Company, on the 18th day

2 May, A. D. 1881, the sum of one thousand dollars, with interest thereon at the rate of ten per cent, per annum, payable annually, principal and interest payable at the office of the Corbin Banking Co., N. Y. City, and that there was attached to said note, interest coupons for the several instalments of interest to become due thereon.

Further, your orator represents and shows unto your honors that the said George Weeth, by the terms of the said note, undertook and promised to pay interest on any unpaid instalment of interest at the rate of ten per cent. per annum, and that if any instalment of interest should remain unpaid for a period of five days after the maturity thereof, the whole amount of principal and interest should thereupon, at the option of the holder of said note, become immediately due and payable.

Further, your orator represents and shows unto your honors that it is the owner and holder of said note, and of each of the unpaid interest coupons pertaining thereto; and that notwithstanding the said promise and undertaking, the said George Weeth to pay instalment of interest falling due October 1st, 1879, being $100, has made default, and the said de-

fault having continued until this day, a period of more than five days from the maturity of the said instalment of interest, your orator has elected to declare and does declare the whole amount of the said note and the interest thereon, to be immediately due, payable and recoverable, to wit, eleven hundred dollars, with interest thereon at the rate of ten per cent. per annum from October 1st, 1879.

Further, your orator represents and shows unto your honors that the said George Weeth and Ann Weeth, for the purpose of securing the payment of the said moneys when the same should become due, on the 18th day of May, A. D. 1876, made and delivered unto your orator a mortgage, by which they did grant, bargain, sell, alien, release, convey, and confirm unto your orator and its assigns forever, the following described real estate situate, lying and being in the county of Sarpy, in the State of
3 Nebraska, that is to say, the west half of the northeast quarter and the west half of the southeast quarter of section twenty-nine (29), township fourteen (14), range (11), together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining. The said conveyance to be void, however, if the said respondents should well and truly pay the aforesaid sum of money, with the interest thereon, according to the term of the said promissory note, and should keep and perform the several covenants in the said mortgage contained, according to the true intent and meaning thereof, which said mortgage was duly acknowledged by the said respondents, and recorded in the office for recording deeds, etc., in and for said county of Sarpy, in the State of Nebraska, in book of mortgages on page , on the day of , A. D. 18 , at o'clock m.

Further, your orator shows unto your honors that the said respondents further agreed in the said mortgage that if they should fail to pay any of said interest when due, such interest should bear interest at the rate of ten per cent. per annum from the maturity thereof, and that said mortgage should stand as security therefor.

Further, your orator represents and shows unto your honors that it was further stipulated in said mortgage that if the maker of said note should fail to pay any of said money, either principal or interest, within five days after the same should become due, or to conform to or to comply with any of the foregoing covenants, the whole sum of money therein secured should thereupon become due and payable at once, and the said mortgage might thereupon be foreclosed immediately for the whole of said money, interest, and costs, together with statutory damages in case of protest, and any legal holder thereof should at once, upon the filing of a bill for the foreclosure of the said mortgage, be forthwith entitled to the immediate possession of the above described premises, and might at once take possession and receive and collect the rents, issues, and profits thereof.

4 Further, your orator represents and shows unto your honors that the said defendants, or those claiming under them, have from the time of making and executing the said mortgage, possessed and enjoyed, and still do possess and enjoy, all and singular the said mortgaged premises, and have at all times received, and do receive, the rents, issues and profits thereof, and that no proceedings at law or otherwise have been had by it or any other person or persons for the recovery of the aforesaid sums of money mentioned in the notes aforesaid, or said mortgage, or any part thereof.

Your orator further alleges and shows that the said respondents did, in said mortgage, stipulate and agree with your orator that in the event of bringing suit upon the aforesaid note and mortgage, this court should tax up as part of the costs of this suit the sum of $100.00 as a liquidated attorney's therein, and that the same should be collected as part of the costs of this suit. And your orator shows that it has been obliged to employ counsel for the purpose of this action at an expense to it greater than the amount so stipulated and agreed upon.

And further your orator represents and shows unto your honors that no personal claim is made against any of the said defendants except the said George Weeth.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, it solicits the aid of this court to compel said defendants full, true, and perfect answers to make to all and singular the statements and charges above set forth, and that the said respondents may be decreed to pay to the said complainants said principal sum of money above mentioned, with the arrears of interest now due, or hereafter to become due and payable, according to the tenor of said note, together with ten per cent. interest per annum upon the said principal sum, and all unpaid interest due and payable by the aforesaid note, according to the tenor and conditions thereof, with your orator's costs and charges in this behalf expended, and the sum of $100 as attorney's fee herein, by a day to be appointed by this court; in default thereof that the said defendants and each of them, and all persons claiming under them or either of them, or otherwise, may be foreclosed of and from all equity of redemption and claim of, in, and to said mortgaged premises, and every part thereof, with the appurtenance, and may deliver over to said complainant all deeds or writings relating to and concerning the same; that all and singular said mortgaged premises, with the appurtenances, may be sold under the decree of this court, and that out of the money arising from the sale thereof complainant may be paid the principal sum due on said notes and mortgage, and all interest money due and to become due thereon, together with all costs and charges by it in this behalf expended, and the sum of $100 for solicitor's fees.

And that your orator may have such other and further relief as shall be agreeable to equity and good conscience.

And may it please your honors to grant unto your orator a writ of subpœna, to be issued under the seal of this court, directed to said George Weeth and Ann Weeth, therein and thereby commanding them, on a certain day and under a certain penalty therein, to be limited, personally to be and appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to and perform and abide by such further direction, and decree herein as to your honors shall seem meet. And your orator will ever pray.

BROWN AND CAMPBELL,
Solicitors for Complainant.

S. E. BROWN,
of Counsel.

Upon the back of said bill appear endorsements in words and figures following, to wit: No. 210. Doc. E, United States circuit court, district of Nebraska. In chancery. The New England Mortgage Security Co., versus George Weeth, et al. Filed Dec. 12, 1879. Watson B. Smith, clerk. Brown and Campbell solicitors for plaintiff, Davenport, Iowa.

Thereupon afterwards, at the January term of said circuit court,
6 and on the 21st day of January, 1880, the following proceedings were had in said case, as appears of record on folio 131, journal F, of said court, to wit:

NEW ENGLAND MORTGAGE SECURITY CO.
vs.
GEORGE WEETH, ET AL.

On motion of said defendants, by C. A. Baldwin, their solicitor, leave is hereby granted them to answer herein by the next March rules, and said plaintiff is ruled to reply at the April rules.

Thereupon afterwards, to wit, on the 27th day of Feb'y, 1880, an answer was filed in said case, which said answer is in words and figures following, to wit:

In the circuit court.

UNITED STATES,
District of Nebraska:

THE NEW ENGLAND MORTGAGE SECURITY CO.,
complainants,
vs.
GEORGE WEETH AND ANN WEETH, DEFENDANTS.

Answer of George and Ann Weeth.

Now comes the said defendant, George Weeth, and for himself and his codefendant, Ann Weeth, makes this their answer to complainant's bill of complaint; and said defendants each and both of them, now and at all times hereafter, saving and reserving unto themselves, and each and both of them, all benefit and advantage of exception which can and may be had or taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or to so much thereof and such parts thereof as these defendants are advised is or are material for them or either of them to make answer unto, they, these defendants, severally answering, say that they are of foreign birth, are husband and wife, and are unacquainted with the manner of doing business, especially in this country; that they read the English language very indifferently, and are not in the habit of reading the English lan-
7 guage when written, and did not read any of the papers signed by them or either of them, in and about negotiating for and making the loan of money which is the subject of controversy here.

That they live upon and cultivate the land covered by the mortgage

here sought to be foreclosed, and it is, and was at the time of the giving of said mortgage, their family homestead.

That they are both far advanced in years, and their means are very limited. That the foreclosure of this mortgage at this time and a sale of said land would cause a sacrifice of almost their entire property.

Defendants say that said complainant ought not to have and maintain its said action against them for the reason that the same is based and founded upon an usurious, illegal, and corrupt agreement, that is, contrary to and in open violation of the law, and is absolutely void.

Defendants say that at and before the time of the making of the said agreement and contract of loan they, by reason of certain misfortunes, had become exceedingly embarrassed pecuniarily; that a judgment was hanging over, their property was liable to be sold at a forced sale and greatly sacrificed, and defendants were in distress for a sum of money; of all of which said facts the complainant, its agents and servants, had actual knowledge at the time of the making of said agreement for and loan of money to these defendants, and took advantage of to make such illegal and usurious agreement and loan as hereinafter stated.

Defendants say that the said complainant, at and before the time of the making of the agreement, note, and mortgage here in controversy, was engaged in the business of loaning money upon interest, and upon such terms, as to rate of interest and security, as with its customers complainant could bargain and agree.

That to the end and for that purpose complainant placed with the Corbin Banking Company, a monied institution of the city and State of New York, having its place and doing its said business in said city and State, large sums of money to be loaned; and said complainant employed

8 said Corbin Banking Company to negotiate for and make loans of complainant's said money in the name and for the benefit of said complainant to customers, and upon such terms as to security and rate of interest as the said Corbin Banking Company could make and agree with each individual customer, the said Corbin Banking Company being authorized and empowered by said complainant to make said loans and agreement therefor in the name and for the use and benefit of said complainant.

That all said agreements and contracts for the loan of complainant's said money so placed with and loaned by the said Corbin Banking Company, its agents and employees, were made, accepted, and agreed upon by this said Corbin Banking Company, its agents and employees, in the said city and State of New York.

Defendants say that to the end, and for the purpose of making such loans, the said Corbin Banking Company had and employed an agent in Omaha, Nebraska, to wit, one Hon. J. R. Hyde, whose business it was as such agent, to advertize for such loans, examine personally the property sought to be mortgaged as security for the said loans, make a map and plat of the same, take a written application of the customer for the loan, and an offer upon his part to accept the conditions of the loan, as informed by said Hyde as such agent, they were and would be; all of which said papers were forwarded by said Hyde to New York to said Corbin Banking Company, who, upon receipt thereof, would determine and agree then and there whether or not they would accept the security offered and make the loan sought.

Defendant George Weeth says that in the spring of 1876 he learned of the advertisement by said Hyde of money to loan, and soon after he applied to said Hyde for a loan of money, to wit, about $800.

That said Hyde was then and there acting as the agent of said complainant and the said Corbin Banking Company, and of which fact said Hyde then and there informed said defendant.

That thereupon said Hyde, so acting as such agent as aforesaid, informed this defendant, and told him the terms and conditions upon which his
9 principal, to wit, this complainant and the Corbin Banking Company, so acting as such agents as aforesaid, would make the loan to him if the security he offered should prove acceptable to the said Corbin Banking Company, to wit, that he, said defendant, must propose and agree to execute and deliver to complainant his note for one thousand dollars, due in five years from date, with interest thereon at the rate of ten per cent. per annum, the interest to be paid annually, the whole amount, principal and interest, when paid, to be paid in New York City, New York, to said Corbin Banking Company, the whole amount to be secured by a mortgage upon unencumbered real estate of double the value of amount loaned, and that for such note and mortgage he would receive the sum of eight hundred and fifty dollars, and no more.

That in order to avoid the appearance of usury in the transaction, defendant must sign some kind of a paper to be prepared by said Hyde, the precise nature of which defendant cannot now state, as he never read the same or heard it read; but the object and purpose of the said paper was, as said Hyde informed this defendant, to account for the difference between the amount stated in the note and mortgage, and the amount actually loaned, so as to avoid the appearance of usury in the transaction.

Defendant says that at the time he did not think, and being unable to make the calculation did not know what rate of interest the sum so retained from the thousand dollars added to the rate of ten per cent. thereon, specified in the note, would actually aggregate on the amount so loaned him, and, being sorely pressed for money, he accepted the said terms so proposed to him by said Hyde as such agent as aforesaid on his part, and agreed to take the money upon said terms, provided said complainant and the said Corbin Banking Company so acting as its agents and employees should and would accept his said land as security therefor.

Defendant says that thereupon, and in pursuance of said arrange-
10 ment so made with said Hyde, agent as aforesaid, he furnished to said Hyde some abstract of the title to his said lands, and the said Hyde, so acting as such agent as aforesaid, made a plat and accurate description of said lands, and forwarded the same to New York to said Corbin Banking Company, together with said abstract of defendant's title, and his said application for such loan, and acceptance of the terms so proposed by said Hyde on the part of said defendants; that upon receipt thereof by the said Corbin Banking Company, in the city of New York aforesaid, the said Corbin Banking Company, then and there acting as the agent and employees of said complainant, and then and there having full power and authority to act for said complainant in the premises, and to accept said security, and make said loan and agreement therefor, did then and there, as such agents and employees of said complainant, accept said security so offered by this defendant, and did then and there consum'ate and make with this defendant said agreement for said loan, and did loan to said de-

fendant the sum of eight hundred and fifty dollars—and no more—the money of said complainants; and the said Corbin Banking Company, by its agents and servants, at the city of New York aforesaid, did make and prepare a note and mortgage ready for signing, and forwarded to these defendants, together with the said sum of eight hundred and fifty dollars; that upon the receipt of said note and mortgage, so made and prepared as aforesaid, said defendants did sign their names unto, as they had agreed to do, and did receive and have the said sum of eight hundred and fifty dollars from said complainant, and no more.

That the said note and mortgage so prepared in New York and signed by these defendants are the identical ones sued upon.

Defendants say that at the time said contract was made and said money was so as aforesaid loaned by this complainant, in the State of New York aforesaid, it was and now is the law of said State that the rate of interest upon the forbearance of any money, goods, or things in action should
11 continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum or for a longer or shorter time; that all bonds, bills, notes, assurances, all other contracts or securities whatever, except bottomdory responbeentia bonds and contracts, and all deposits of goods or other things whatsoever whereupon or whereby there shall be reserved or taken or secured or agreed to be reserved or taken any greater value for the loan or forbearance of any money, goods, or other things in action therein above prescribed shall be void.

Defendants say that said agreement for said loan, and said loan was so as aforesaid in the State of New York corruptly made, and was and is against and in open violation of the said laws of New York, and is void and cannot be enforced.

Defendants say that notwithstanding the facts aforesaid they have paid to said complainant upon the said amount so as aforesaid loaned them the sum of two hundred and forty-eight $\frac{05}{100}$ dollars ($248.05), to wit, in the fall of 1876, $29.50, and January 3, 1879, the sum of $218.55; that at the time said loan was so as aforesaid made it was the law of Nebraska, where said defendant lived, and where the said agreement is now sought to be enforced, and when said defendants so as aforesaid signed said note and mortgage, that (see sec. 1, page 446, laws of Nebraska) any rate of interest which may be agreed upon, not exceeding twelve dollars per year upon one hundred dollars, shall be valid upon any loan or forbearance of money, goods, or things in action, which rate of interest so agreed upon may be taken yearly or for any shorter period or in advance, if so expressly agreed.

SEC. 5. If a greater rate of interest than is hereinbefore allowed shall be contracted for or received or reserved, the contract shall not, therefore, be void, but if in any action on such contract proof may be made that illegal interest has been directly or indirectly contracted for or taken or
12 reserved, the plaintiff shall only recover the principal, without interest, and the defendant shall recover costs, and if interest shall have been paid thereon judgment shall be for the principal, deducting the interest so paid.

That said laws are now in force in this State, except that the rate of interest, as provided in first section, to wit, 12 per cent., as the maximum, has been changed, and now is fixed by the laws of Nebraska at ten per cent.

Defendants say that if said complainants shall claim and maintain that said agreements for and said loan was not made in the State of New York, as said defendants herein aver the fact to be, but that the same was made in the State of Nebraska, and subject to the laws of Nebraska now, is not the said complainant entitled to recover herein, for the reason that the said agreement for and the loan of money so made was corruptly and illegally made, and was in open violation of the laws of Nebraska, and was usurious; and if the court find that the contract was made in Nebraska, in that case the said complainant would be entitled to recover only the sum of $850 so loaned, less the sum of $248.05 so paid by defendants thereon, to wit, $601.95, the defendants to recover their costs expended.

Defendants say that the said Hyde was not and did not act as the agent of these defendants, directly or indirectly, in the making of said loan; that they never in any manner employed him as such agent, but that in all their dealings with him in and about the making of said loan they dealt with him as the agent of the party from whom they were going to have the money, to wit, this complainant; and these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants, or either of them, to make an-
13 swer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of these defendants, or either of them, all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

C. A. BALDWIN,
Sol. for Def'ts.

UNITED STATES,

District of Nebraska, Sarpy County:

George Weeth, being first duly sworn, deposes and says that he is one of the above-mentioned defendants; that he has heard read the foregoing answer to complainant's bill of complaint, and he says that the matters and things and the facts stated in the foregoing answer are true.

GEORGE WEETH.

Sworn to before me and subscribed in my presence this 14th day of Feb'y, A. D. 1880.

J. W. THOMPSON, [SEAL D. C.]
Clerk of Dist. Court.

Upon the back of said answer appear endorsements in words and figures following, to wit:

Equity doc. E. No. 210. The N. E. M'tg'e Security Company vs. George Weeth et al. Answer of defendant. Filed Feb'y 27, 1880. Watson B. Smith, clerk. A. Baldwin, sol.

Thereupon, afterwards, to wit, March 4th, 1880, a replication was filed in said case; which replication is in words and figures following, to wit:

In the circuit court of the United States, district of Nebraska.

THE NEW ENGLAND MORTGAGE SECURITY Company
vs.
GEORGE WEETH AND ANN WEETH.

The replication of the complainants unto the answer of George Weeth and Ann Weeth.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver and prove its said
14 bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that an' other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and *honorably* prays as in and by his said bill it hath already prayed.

BROWN AND CAMPBELL,
Complainant's Solicitors.

Upon the back of said replication appear endorsements in words and figures following, to wit: No. 210. E. New Eng. Mort. Sec'y Co. vs. George Weeth et al. Replication. Filed March 4, 1880. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, on the 3rd day of May, A. D. 1880, a note, 3 coupons, and mortgage were filed in said case, which note, 3 coupons, and mortgage are in words and figures following, to wit:

Mortgage.

NEBRASKA:

This indenture, made and executed this eighteenth day of May, A. D. eighteen hundred and seventy-six, by and between George Weeth and Ann Weeth, husband and wife, of the county of Sarpy and State of Nebraska, parties of the first part, and the New England Mortgage Security Company, of the county of Windham, and State of Connecticut, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one thousand dollars, paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted and sold, and do by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, and its assigns forever, the certain tract or parcel of real estate situated in the county of Sarpy and State of Nebraska, described as follows, to wit: The west half of the northeast quarter and the west half of the southeast quarter of section No. twenty-
15 nine (29), township N. fourteen (14), range No. eleven (11) E., containing one hundred and sixty (160) acres, to have and to hold the premises above described, with the appurtenances thereunto belonging, to said second party and to its assigns forever. The said parties of the first

part represent to and convenant with the party of the second part, that they have good right to sell and convey said premises; that they are free from encumbrance, and that they will warrant and defend them against the lawful claims of all persons, and the parties of the first part to expressly hereby release all rights of dower in and to said premises, and relinquish and convey all their rights of homestead therein.

This instrument is made, executed, and delivered upon the following conditions, to wit, if the said first parties shall well and truly keep, observe, and perform all and singular the several stipulations hereinafter set forth, then this instrument, and the estate hereby created, shall cease, determine, and become void and of no effect; otherwise to be and remain in full force.

First. Said parties agree to pay said second party, or order, one thousand dollars, on the eighteen' day of May, A. D. 1881, with interest thereon from date until paid, at the rate of ten per cent. per annum, payable annually on the first day of October in each year, according to the one promissory note of the said George Weeth, with coupons attached, of even date herewith, at the office of the Corbin Banking Company, New York City.

Second. Said first parties agree, as is stipulated in said note, that if the maker thereof shall fail to pay any of said interest when due, such interest shall bear interest at the rate of ten per cent. per annum from the time it becomes due, and this mortgage shall stand as security therefor.

Third. The said first parties agree to pay all taxes and assessments levied upon said real estate before the same become delinquent, and if
16 not paid, the holder of this mortgage may, without notice, declare the whole sum of money herein secured, due and collectible at once, or may elect to pay such taxes or assessments, and be entitled to interest on the same at the rate of ten per cent. per annum, and this mortgage shall stand as security for the amount so paid with interest.

Fourth. The said first parties agree to keep all buildings, fences, and other improvements on said real estate in as good repair and condition as the same are in at this date, and shall permit no waste, and especially no cutting of timber, except for making and repairing fences on the place, and such as shall be necessary for firewood for the grantor's family.

Fifth. The said first parties agree that if the maker of said note shall fail to pay any of said money, either principal or interest, within five days after the same becomes due, or to conform to or to comply with any of the foregoing conditions or agreements, the whole sum of money herein secured shall thereupon become due and payable at once, and this mortgage may thereupon be foreclosed immediately for the whole of said money, interest, and costs, together with statutory damages in case of protest; and said second party, or any legal holder hereof, shall at once, upon the filing of a bill for the foreclosure of this mortgage, be forthwith entitled to the immediate possession of the above-described premises, and may at once take possession and receive and collect the rents, issues, and profits thereof, and that upon the filing of a bill for the foreclosure of the mortgage, an attorney's fee of one hundred dollars shall become due and payable, and shall be by the court taxed, and this mortgage shall stand as security therefor, and the same shall be included in the decree of foreclosure, and shall be made by the sheriff, or other proper officer, on general or special execution

with the other money, interest, and costs. For value received, the said parties of the first part do hereby expressly waive an appraisement of said real estate, should the same be sold under execution, order of sale,
17 or other final process, and do further waive all benefits of the stay, valuation, or appraisement laws of the State of Nebraska; and do further agree that the contract embodied in this mortgage, and the note secured hereby, shall in all respects be construed according to the laws of Nebraska, where the same is made.

In testimony whereof the said parties of the first part have hereunto set their hands the day and year first above written.

GEORGE WEETH.
ANN WEETH.

In presence of—
J. E. CAMPBELL.

STATE OF NEBRASKA,
Sarpy County, ss:

On this 29th day of May, A. D. 1876, before me, a notary public, duly appointed, commissioned, and qualified for and residing in said county, personally appeared George Weeth and Ann Weeth, husband and wife, who are to me personally known to be the identical persons described in and whose names are affixed to the foregoing mortgage deed as grantors, and they severally acknowledged the same to be their voluntary act and deed.

In witness whereof I have hereunto set my hand and official seal, at Papillin, in said county, the day and year last above written.

[SEAL SARPY COUNTY.] J. E. CAMPBELL,
Notary Public, Sarpy County, Nebraska.

Upon the back of said mortgage appear endorsements in words and figures following, to wit: No. 210. E. No. 2208. No. 15868. $1,000 mortgage. George Weeth and wife to the New England Mortgage Security Company. Description of land, W. 2 NE. & W. 2 SE., 29, 14, 11 E. State of Nebraska, Sarpy County.

Filed for record the 30th day of May, A. D. 1876, at 2 o'clock p. m., and recorded in book C of mortgages, on page 559 and 562, inclusive.

J. E. CAMPBELL,
Register of Deeds.

J. R. Hyde, Omaha; note, $1,000. Nasby, Neb., 18 May, 1876.

18 $1,000.00] NASBY, NEB., 18*th May*, 1876.

Value received on the eighteenth day of May, 1881, I promise to pay the New England Mortgage Security Company, or order, one thousand dollars, with interest from date until paid at ten per cent. per annum, as per coupons attached, at the office of the Corbin Banking Company, 61 Broadway, New York City.

Unpaid interest shall bear interest at 10 per cent. per annum. On failure to pay interest within five days after due, the holder may collect the principal and interest at once.

No. 15868.] GEORGE WEETH.

This note is secured by a first mortgage on 2, NE., a. W. 2, SE., 29, 14, 11 E., in Sarpy County, Neb.

Upon the back of said note appear endorsements, in words and figures following, to wit: No. 2208. No. 210. E. Filed May 3, 1880. Watson B. Smith, clerk.

Coupons.

$100.] 1 OCTOBER, 1879.

I promise to pay the New England Mortgage Security Company, or order, one hundred dollars, interest to that date on my note for one thousand dollars.

No. 15868.] GEORGE WEETH.

Payable at the office of the Corbin Banking Company, 61 Broadway, New York.

(Endorsed:) Filed May 3, 1880. Watson B. Smith, clerk.

$100.] 1 OCTOBER, 1880.

I promise to pay the New England Mortgage Security Company, or order, one hundred dollars, interest to that date on my note for one thousand dollars.

No. 15868.] GEORGE WEETH.

(Written across the face in red:) Payable at office of the Corbin Banking Company, 61 Broadway, New York.

(Endorsed:) Filed May 3. Watson B. Smith, clerk.

$63.34.] 18 MAY, 1881.

I promise to pay the New England Mortgage Security Company, or order, sixty-three and 34 hundredths dollars, interest to that date on my note for one thousand dollars.

No. 15868.] GEORGE WEETH.

(Written across the face in red:) Payable at office of the Corbin Banking Company, 61 Broadway, New York.

19 Payable at the office of the Corbin Banking Company, 61 Broadway, New York.

(Endorsed:) Filed May 3, 1880. Watson B. Smith, clerk.

Thereupon, afterwards, at the July term of said circuit court, and on the 9th day of July, 1880, the following proceedings were had in said case, as appears of record on folio 421, journal F, of said court, to wit:

THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
GEORGE WEETH ET AL.

On motion of said plaintiff, by its solicitors, it is ordered that the time for taking proofs herein be, and the same is, extended to next October rules.

Thereupon, afterwards, to wit, September 7, 1880, a deposition was received and filed in said case, which said deposition is in words and figures following, to wit:

Dedimus potestatem.

Circuit court of the United States, district of Nebraska, ss.

To M. J. Connelly, New York City, greeting:

Know ye, that in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine F. W. Dunton, on his corporal oath, as a witness in a cause depending in the circuit court of the United States, for the district of Nebraska, wherein the New England Mortgage Security Company is plaintiff, and George Weeth et al. are defendants, on the part of the said plaintiff, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded, that at certain days and places to be appointed by you for that purpose, you do cause the said F. W. Danton, to come before you, and then and there examine him on oath upon the said interrogatories, and that you reduce such examination to writing, and return the same, together with the accompanying notice & interrogatories and this commission, under your seal, sealed up, and indorsed with the names of the parties litigant, and the word (deposition) on the cover thereof, into the said circuit court, at Omaha, Nebraska, to the clerk thereof, with all convenient speed.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this ninth day of August, A. D. 1880, and in the 105th year of the Independence of the United States of America.

Attest:

[SEAL OF CIRCUIT COURT.] WATSON B. SMITH,
Clerk.

(Original.)

Notice of sueing out dedimus protestatem.

In the circuit court of the United States, district of Nebraska.

THE NEW ENGLAND MORTGAGE SECURITY Company, plaintiff,
vs.
GEORGE WEETH ET AL., DEFENDANTS.

To the defendants in the above-entitled cause, and C. A. Baldwin, esq., their solicitor:

You, and each of you, are hereby notified that on the 9th day of August, 1880, we shall sue out of the office of the clerk of said court, at 9 a. m., of that day, dedimus protestem, to be directed to M. J. Connelly, a notary public in and for the city and county of New York, State of New York, to take the testimony of F. W. Danton, upon interrogatories annexed hereto, and whereof a copy, with a copy of this notice, is herewith served upon

you; such testimony to be used on the trial of the above-entitled cause on the behalf of the complainant.

Yours, very truly,

BROWN AND CAMPBELL,
Complainant's Sol.

We accept due and legal service of the above notice and interrogatories, this 19th day of July, 1880.

A. BALDWIN,
Attorneys for Def'ts.

21 EXHIBIT B.

Whereas I have this day employed the Corbin Banking Co. to negotiate for me a loan of $1,000 for a term of five years, with interest at the rate of 10 per cent. per annum, upon a note and mortgage securing the same, which shall be a first lien upon my farm in Sarpy County, Nebraska:

Now, then, if they shall succeed in negotiating said loan within 30 days, upon the usual conditions exacted by eastern money lenders, as to security, perfecting title, insurance, etc., I agree to pay the said Corbin Banking Company the sum of $150, which shall be in full of their commissions, and the commission of those whom they employ to assist them in making said negotiation.

GEORGE WEETH.

MAY 12, 1876.

Value of property	$3,200
Amount of loan	$1,000
Time	five years.

Borrower's name and age: George Weeth, 46 years of age.

Wife's name: Ann.

P. O. address: Nasby, Sarpy County, Nebraska.

1. What are the numbers of the land? W. half NE. 4th and W. half SE. 4th 29, 14, 11 east, making 160 acres in Sarpy Co., Nebr.

2. What is the size and material of the house and when built? 16 by 28, pine; 1 and one-half stories high, 16 by 16, wing 12 by 16; worth about $600; a good well.

3. What kind of stable? Post and hay; cattle yard, hog pen, cribs, etc., of but little value.

4. On what part of the land are the buildings? Near SE. corner of W. half NE. 4th.

5. How many acres broken, how many fenced, and what kind of fence and its condition? Hedge; 37 acres, and in bad condition.

22 6. How many acres upland, slough, bottom land, timber, and quality of land? 160; good.

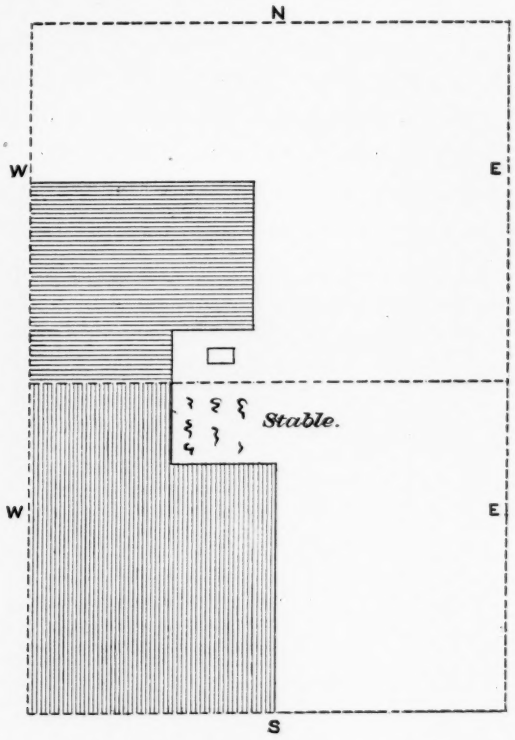
7. Has the farm any running water? Show direction of streams on diagram. No.

8. How many bushels and kinds of small grain raised on your place last year; state fully? 148 bushels of wheat, 500 bus. of oats, 200 corn; crops badly injured by grasshoppers.

9. Distance, name, and population of the nearest and usual market town? 9 miles; Papillion; population about 800; county seat.

10. Distance, name, and population of nearest railroad station? 7 miles, Millard; 18 miles, Omaha.

EXHIBIT C.



This diagram shows location of streams, buildings, and improvements, what is cultivated, sloughs, uplands, &c.

The statement made in the within application, and in the supplement sent herewith to Austin Corbin, are true, and are made by me to be used by him as my agent in procuring for me the loan described herein.

GEORGE WEETH, *Applicant.*

(On the outside the following endorsements appear fully:) Application loan No. 15868. Weeth. Negotiated by the Corbin Banking Co., 61 Broadway, New York.

23

Interrogatories to be propounded to F. P. Danton.

1. What is your name, age, place of residence, and occupation?
2. Do you know either of the parties to this suit, and, if so, how long have you known them?

3. What, if anything, have you to do with the Corbin Banking Company of New York?

4. You may state what, if anything, you had to do with procuring a loan for the defendant George Weeth, of one New England Mortgage Security Company of $1,000 about May, 1876, secured on lands in Sarpy County, State of Nebraska, to wit, W. 1-half NE. and W. 1-half SE., 29, 14, 11.

5. If you had to do with said loan, state what you did, by whom you were employed to do what was done by you, and when so employed.

6. State whether said employment was in writing or verbal.

7. Look at the contract, a copy of which is here shown you (the original being attached to the deposition of def't Weeth as Exhibit B, and this copy being sent by the examiner of said Weeth as a true copy), and state whether you were so employed under said contract attached to commission as B.

8. Look at the paper, the original whereof is attached to the deposition of said Weeth as Exhibit C, and this being the copy furnished by the examiner of court (now shown you), attached to commission as C, and state what you did under said application and the contract mentioned in int. 7.

9. You may state whether you procured the said loan for said defendant, and what your services in that respect were reasonably worth at that time.

10. What, if any, compensation were you to receive for your services in and about said loan, by whom was such compensation to be paid, and when?

11. By whom was such compensation paid, if at all, and when and how?

24 12. What, if any, complaints were made by the defendant as to the amount of such compensation or the manner of its payment until this suit was brought?

13. You may state what, if any, rate of interest was to be paid for said loan?

14. What, if any, knowledge had the mortgagee or the pl'ff at any time that you, or any agent or broker or other person connected with the negotiation or procurement of said loan, received or agreed to receive such compensation or any compensation whatever?

15. State whether said mortgagee or complainant ever received or agreed to receive any rate of interest above 10 per cent. for or on account of said loan.

16. If you have stated that you were employed to procure said loan, to whom did you make application for the money, and of whom did you obtain it, and at what rate per cent.?

17. State whether you were employed by mortgagee or complainant to lend their money, and particularly this money.

18. State whether you, or any person, so far as you know, intended in all or any of the transactions connected with said loan, to violate the laws of the States of New York or Nebraska, or any State, on the subject of usury.

19. State with reference to what law on the subject of interest you made or negotiated said loan—the laws of New York or of Nebraska.

20. State whether the complainant or mortgagee ever received or agreed to receive any part of the compensation for obtaining said loan.

21. State any other matter or thing of benefit to either party, as fully as if specially interrogated thereunto.

BROWN AND CAMPBELL,
Complainant's Sol.

Filed Aug. 3, 1880. Watson B. Smith, clerk. No. 210 E.

UNITED STATES OF AMERICA,
District of Nebraska, ss:

STATE OF NEW YORK,
County of New York, ss:

25 Be it remembered that on this 3rd day of September, A. D. 1880, I, M. J. Connelly, notary public, appointed, duly commissioned and qualified, and by the laws of the United States authorized and empowered to take depositions in causes pending in the circuit court of the United States, did call and cause to be and personally before me at my office in New York, in the county of New York, and State of New York, and in the said district, F. W. Danton, to testify and the truth to say on the part and behalf of the plaintiff in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the district of Nebraska, at Omaha, in the district aforesaid, wherein, the New England Mortgage Security Company is plaintiff and George Weeth et al. are defendants.

And the said F. W. DANTON, being about the age of twenty-nine years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said F. W. Danton, and he did thereupon depose, testify, and say as follows, viz:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. 1. F. W. Danton; 29 years; cashier of the Corbin Banking Co., New York.

Int. 2. Do you know either of the parties to this suit, and if so, how long have you known them?

Ans. 2. I do not know George Weeth; I do know the New England Mortgage Security Co.; have known it for at least five years.

Int. 3. What, if anything, have you to do with the Corbin Banking Company of New York?

Ans. 3. I am the cashier of said company and manage the business in the office in said city.

Int. 4. You may state what, if anything, you had to do with procuring a loan for the defendant, George Weeth, or one New England Mortgage Security Company, of $1,000, about May, 1876, secured on lands in Sarpy County, State of Nebraska, to wit, W. 2 NE., and W. half SE. 29, 14, 11.

26 Ans. 4. I had nothing to do directly with procuring the loan that was done in Boston through the Corbin Banking Company in that city. The application by Mr. Weeth was forwarded by his agent, J. R. Hyde, of Omaha, to the Corbin Banking Company in New York, and as we could not at the time of its receipt get the money thereon here, we sent it to the

Corbin Banking Company in Boston, and they obtained it from the New England Mortgage Security Company.

Int. 5. If you had to do with said loan, state what you did, by whom you were employed to do what was done by you, and when so employed.

Ans. 5. All I had to do with the loan was this: When the application came, as it could not be promptly negotiated in New York, I sent it to the Corbin Banking Company in Boston, on receipt from them of advices that they had obtained the money thereon from the New England Mortgage Security Company. I had the note and mortgage, which was made a part of the papers in this suit, prepared and sent Mr. Weeth, and when they were returned by him, with abstract of title, I sent them to the Corbin Banking Company in Boston. We were really employed by J. R. Hyde, and I consider the time of the employment to have been when we received the application.

Int. 6. State whether said employment was in writing or verbal.

Ans. 6. Writing.

Int. 7. Look at the contract, a copy of which is here shown you, the original being attached to the deposition of defendant Weeth, as exhibit B, and this copy being sent by the examiner of said Weeth as a true copy, and state whether you were so employed under said contract attached to commission as B.

Ans. 7. This is a copy of the contract which accompanied the application from Mr. Hyde; in reality J. R. Hyde was the party employed. By some oversight the name of the Corbin Banking Company was printed in a lot of contracts, and many of them used before the error was noticed.

The party actually employed in this case was J. R. Hyde, who sent
27 the application to us, and as the agent for Weeth to negotiate.

Int. 8. Look at the paper (the original whereof is attached to the deposition of said Weeth as Exhibit C,) and this being the copy furnished by the examiners of court (now shown you,) attached to commission C, and state what you did under said application and the contract mentioned in int. 7.

Ans. 8. My answer to interrogatory 5 covers this.

Int. 9. You may state whether you procured the said loan for the said defendant, and what your services in that respect were reasonably worth at that time.

Ans. 9. I have answered as to procurement of the loan in reply to interrogatory 5; the service was worth all we received therefor at that time.

Int. 10. What, if any, compensation were you to receive for your services in and about said loan? By whom was such compensation to be paid, and when?

Ans. 10. The sum of $100, to be paid by Weeth.

Int. 11. By whom was such compensation paid, if at all, and when, and how?

Ans. 11. It was paid by Weeth; we sent to Mr. Hyde $900, which was the amount received from The New England Mortgage Security Company, less the commissions as agreed, which we were to have for obtaining the loan.

Int. 12. What, if any, complaints were ever made by the defendant as to the amount of such compensation or the manner of its payment, until this suit was brought?

Ans. 12. None, to my knowledge.

Int. 13. You may state what, if any, rate of interest was to be paid for said loan.

Ans. 13. The rate of interest was to be 10 per centum per annum, payable annually.

Int. 14. What, if any, knowledge had the mortgagee or the plaintiff at any time that you, or any agent or broker or other person connected with the negotiations or procurement of said loan, received or agreed to
28 receive such compensations or any compensation whatever?

Ans. 14. None to my knowledge.

Int. 15. State whether said mortgagee or complainant ever received or agreed to receive any rate of interest above 10 per cent. for or on account of said loan.

Ans. 15. I can state that they never did receive any; they never agreed to do so to my knowledge; but ask them.

Int. 16. If you have stated that you were employed to procure said loan to whom did you make application for the money, and of whom did you obtain it, and at what rate per cent.?

Ans. 16. My answer to 5 answers this interrogatory.

Int. 17. State whether you were employed by mortgagee or complainant to lend their money, and particularly this money.

Ans. 17. Neither I nor the Corbin Banking Company in New York were employed by the complainant to loan their money, either this or any other; never loaned a dollar for them in the world.

Int. 18. State whether you or any person, so far as you know, intended, in all or any of the transactions connected with said loan, to violate the laws of the State of New York or Nebraska or any State on the subject of money.

Ans. 18. I certainly never did, nor, so far as I know, did any other person; but ask them.

Int. 19. State with reference to what law on the subject of interest you made or negotiated said loan, the laws of New York or of Nebraska.

Ans. 19. The negotiating was effected with reference to the law of Nebraska.

Int. 20. State whether the complainant or mortgagee ever received or agreed to receive any part of the compensation for obtaining said loan.

Ans. 20. They never received a penny of the compensation
29 obtained by us for negotiating. I cannot say whether they agreed to receive any or not. Ask them.

Int. 21. State any other matter or thing of benefit to either party as fully as if specially interrogated thereunto.

Ans. 21. I know that this transaction was an absolutely straight one in every respect, we acting for Weeth on the application forwarded; did the work necessary in obtaining the money thereon. Never paid to the party from whom it was obtained a single penny of compensation, and, so far as I know, said party never knew we received any. All that the New England Mortgage Security Company knew about the transaction, so far as I know, was that it was to be a straight loan of $1,000 for 5 years at 10 per cent. annual interest. They paid one thousand dollars for the papers, and such commissions as were obtained from Mr. Weeth and Mr. Hyde were retained by us in accordance with the agreement, and no other person

or firm or company got a single red penny on them. We were not employed by the New England Mortgage Security Company to loan this money or any other money.

F. W. DANTON.

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, County of New York:

I, M. J. Connelly, notary public, duly appointed, commissioned, and qualified, and by the laws of the United States authorized and empowered to take depositions to be used in causes pending in the circuit court of the United States, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of the said witness is material and necessary for the plaintiff in the cause in the caption of the said deposition named, and that the said witness lives, and did live at the time of taking said deposition, in New York City, in the State of New
30 York, the same being at a greater distance than one hundred miles from Omaha, in the State of Nebraska, the place of trial of the said cause, to wit, more than one thousand miles therefrom.

I further certify that, as appears by the notice hereto attached, due notice of the time and place of taking the said deposition and the name of the witness to be examined was given.

I further certify that on the third day of September, A. D. 1880, at the hour of 12 o'clock noon, I was attended at my office, in the city, county, and State of New York aforesaid, by F. W. Danton, the witness, who was of sound mind and lawful age, and the said witness was by me carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statement, and after carefully reading the same to the witness, he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same with this certificate of the reasons aforesaid for taking said deposition with my own hand to the court, for which the same was taken.

And I do further certify that I am not of counsel nor attorney for either of the parties in said deposition and caption named, or in any way interested in the event of the said cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this third day of September, A. D. 1880.

M. J. CONNELLY,
Notary Public.

Taking and certifying deposition to file 25 folios, $5.00; administrating oath to witness, 10; filing exhibits, 20; fee of witness, 1.50; issuing subpœna, 25; serving, 50; postage, 30—$7.85.

31 Upon the back of said deposition appear endorsements in words and figures following to wit: No. 210 E. Deposition received Sep., 1880, and opened by order of court, Oct. 16, 1880. Watson B. Smith, clerk.

Thereupon afterwards, to wit, September 22, 1880, a deposition was

filed in said case, which deposition is in words and figures following, to wit:

THE NEW ENGLAND MORTGAGE SECURITY Company
vs.
GEORGE WEETH ET AL.

STATE OF MASSACHUSETTS,
County of Suffolk, ss:

DEPOSITIONS OF FRANCIS A. OSBORN, HENRY SALTONSTALL, AND CHARLES L. FLINT, FOR THE PLAINTIFF COMPANY.

I hereby certify that on the 26th day of August, A. D. 1880, before me, Franzis Peabody, jr., a notary public in and for the city of Boston, county of Suffolk, and Commonwealth of Massachusetts, at the office of the Corbin Banking Company, 43 Milk street, in the city of Boston, between the hours of nine and four, were produced to and personally came before me Francis A. Osborn, Henry Saltonstall, and Charles L. Flint, the witnesses named in the notice hereunto annexed, to depose in a civil case defending in the circuit court of the United States for the district of Nebraska, wherein the New England Mortgage Security Company is plaintiff, and George Weeth et al., defendants; and that neither counsel for plaintiff nor defendant were present, but that interrogatories had been duly filed by Brown and Campbell, solicitors for complainant, and that due notice that a dedimus potestatem would be sued out of the office of the clerk of said court had been served upon C. A. Baldwin, attorney for defendants, and the said Francis A. Osborn, Henry Saltenstall, and Charles Flint, all being of lawful age and sound mind, and being by me first duly examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the truth, touching their knowledge of the matters and things
32 in controversy in said civil cause, deposed and said as follows, respectively.

Deposition of Francis A. Osborn.

1st interrogatory. What is your name, age, place of residence, and occupation?

1st answer. Francis A. Osborn; age, 46; residence in Boston; treasurer of the Corbin Banking Company since January, 1874.

2nd interrogatory. Do you know either of the parties to this suit, and if so, how long have you known them?

2nd answer. I have known the plaintiff company since its organization. I have never known the defendant, George Weeth, personally.

3rd interrogatory. What, if anything, have you to do with the Corbin Banking Company at New York City?

3rd answer. I am treasurer of the Corbin Banking Company, which has offices in New York and in Boston.

4th interrogatory. You may state what, if anything, you had to do with procuring a loan for the defendant, George Weeth, of one New England Mortgage Security Company of $1,000 about May, 1876, secured on lands

in Sarpy county, State of Nebraska, to wit, W. half N. E., & W. ½ of S. E. 29, 14, 11.

4th answer. About the month of May, 1876, I received the application of the defendant, George Weeth, for a loan of $1,000 secured on lands in Sarpy County, State of Nebraska, to wit, W. half N. E. and W. half S. E. 29, 14, 11, from the New York house of the Corbin Banking Company, and at once took steps to obtain such loan. I took the application and carried it to Mr. Henry Saltenstall, then president of the New England Mortgage Security Company, and the only person authorized to make loans for said company, and urged him to make the loan, which, after consideration he agreed to do upon the delivery to him of a satisfactory abstract of title, mortgage, mortgage note and policy of insurance. This was on the 17th day of May, 1876. I at once informed the New York house of the Corbin Banking Company that the New England
33 Mortgage Security Company would make the loan desired upon the above-mentioned conditions. On June 14th, 1876, I received from said New York house the note of defendant with a proper abstract of title showing the mortgage in question to be a first lien on the property, and delivered the same with a policy of insurance to the New England Mortgage Securtiy Company. I received therefor from said company the sum of $1,000 in full, which I at once credited to said New York house, and on the same day advised said house of said credit.

5th interrogatory. If you had to do with said loan state what you did, by whom you were employed to do what was done by you, and when so employed.

5th answer. I have already stated in my answer to the preceding question what I did; and what was done by me was done as an officer of the Corbin Banking Company, who were employed by the defendant to act as his agent in this transaction. I received the application of the defendant, George Weeth, in May, 1876, and as such applications were never sent to me until the contract is made between the applicant and the New York house. I believe the Corbin Banking Company to have been employed by defendant early in May, 1876.

6th interrogatory. State whether such employment was in writing or verbal.

6th answer. Its is the practise of the Corbin Banking Company to make such contracts in writing, and I believe this one to have been so made.

7th interrogatory. Look at the contract, a copy of which is here shown you, the original being attached to the deposition of defendant Weeth as Exhibit B, and this copy being sent by the examiner of said Weeth as a true copy, and state whether you were so employed under said contract attached to the commission as B.

7th answer. I have never seen the contract, a copy of which is annexed to this commission and marked B; such contracts are always retained by said New York house, but the form of Exhibit B is the one
34 generally used by the Corbin Banking Company, and I believe such form to have been used by said company in this case.

8th interrogatory. Look at the paper the original whereof is attached to the deposition of said Weeth as Exhibit C, and this being the copy furnished by the examiner of court (now shown you) attached to com-

mission as C, and state what you did under said application and the contract mentioned in interrogatory.

8th answer. Under the application of defendant, George Weeth, the copy of which is annexed to commission and marked C, and under instructions from the New York house who held the contract above referred to, I took such action as I have detailed in my answer to interrogatory 4.

9th interrogatory. You may state whether you procured the said loan for said defendant, and what your services in that respect were reasonably worth at that time.

9th answer. I did procure said loan for said defendant, George Weeth. I consider that such services as were rendered by the Corbin Banking Company to defendant were, at that time, richly worth the full commission which the defendant willingly agreed to pay.

10th interrogatory. What, if any, compensation were you to receive for your services in and about said loan, by whom was such compensation to be paid, and when?

10th answer. I received no compensation for my services in and about said loan personally, nor did the Corbin Banking Company receive any further compensation than that agreed upon by the contract which they made with defendant, and such compensation to said company was to be paid by said defendant, Weeth, at time he received the money loaned.

11th interrogatory. By whom was such compensation paid, if at all, and when and how?

11th answer. I repeat that no compensation was paid to me personally for my services in obtaining this loan. The compensation was paid to the New York house, and I cannot answer from personal knowledge by whom, when, or how it was paid; I believe it to have been paid by defendant, and at the time of his receipt of the money.

12th interrogatory. What, if any, complaints were made by the defendant as to the amount of such compensation or the manner of its payment until this suit was brought?

12th answer. I never heard of any complaints whatever being made by said defendant.

13th interrogatory. You may state what, if any, rate of interest was to be paid for such loan.

13th answer. The rate of interest to be paid for said loan was 10 per cent. per annum.

14th interrogatory. What, if any, knowledge had the mortgagee or plaintiff at any time that you or any agent or broker or other person connected with the negotiation or procurement of said loan, received or agreed to receive such compensation or any compensation whatever?

14th answer. The plaintiff company, mortgagees, had the general knowledge that the Corbin Banking Company were paid for their services, and did not exist for the amusement of the company's officers and stockholders, but beyond that they had no knowledge that any other agent or broker was employed in procuring said loan.

15th interrogatory. State whether said mortgagee or complainant ever received or agreed to receive any rate of interest above 10 per cent. for or on account of said loan?

15th answer. Said mortgagee or complainant did not receive, nor did it ever agree to receive, more than 10 per cent. per annum interest for said loan.

16th interrogatory. If you have stated that you were employed to procure said loan, to whom did you make application for the money,
36 and of whom did you obtain it; and at what rate per cent.?

16th answer. It is impossible for me to remember the particular persons to whom I made application in this case. It was my custom in such cases to show the application for a loan to any and all persons whom I thought likely to have money which they wished to put into this class of investment, and to continue this process until I found one who was willing to make the loan desired. In this case I finally obtained the money of the New England Mortgage Security Company, and at the rate of 10 per cent. per annum.

17th interrogatory. State whether you were employed by mortgagee or complainant to lend their money, and particularly this money.

17th answer. Neither I, personally, or the Corbin Banking Company was ever employed by mortgagee or complainant to lend their money, and neither of us was employed by the said complainant or mortgagee to lend this money.

18th interrogatory. State whether you or any person, so far as you know, intended, in all or any of the transactions connected with said loan, to violate the laws of the State of New York or Nebraska, or any State, on the subject of usury.

18th answer. Neither I nor any person, so far as I know, intended, in all or any of the transactions connected with said loan, to violate the laws of the States of New York, Nebraska, or any State on the subject of usury.

19th interrogatory. State with reference to what law on the subject of interest you made or negotiated said loan, the laws of New York or Nebraska.

19th answer. This loan was negotiated and made with direct reference to the laws of Nebraska on the subject of interest.

20th interrogatory. State whether the complainant or mortgagee ever received or agreed to receive any part of the compensation for obtaining said loan.

20th answer. The complainant or mortgagee never received or
37 agreed to receive any part of the compensation for obtaining said loan whatever.

21st interrogatory. State any other matter or thing of benefit to either party as fully as if specially interrogated thereto.

21st answer. This whole transaction was conducted by the Corbin Banking Company in perfect good faith, acting as agents for the defendant, George Weeth, and for his best interests. The complainant also acted in entire good faith, paying to us as agents of the defendant Weeth the full sum of money named in note, viz, $1,000, and receiving in return rebate or commission whatsoever, either then or at any subsequent time, and no promise or expectation of any such rebate or commission.

FRANCIS A. OSBORN.

Deposition of Henry Saltonstall.

1st. interrogatory. State your name, age, place of residence, and occupation.

1st answer. My name is Henry Saltonstall; age, fifty-two; I reside at Peabody, Essex County, Massachusetts, and am treasurer of the Pacific Mills.

2nd interrogatory. Please state whether you are the party or officer of the party who loaned to George Weeth $1,000 about May, 1876, secured on 160 acres of land in Sarpy County, State of Nebraska.

2nd answer. I was president of the New England Mortgage Security Company about May, 1876, and as such president was urged by General Francis A. Osborn, treasurer of the Corbin Banking Company, in Boston, as agent of George Weeth, defendant in this case, to make a loan of $1,000 to said Weeth, secured by 16 acres of land in Sarpy County, Nebraska. I agreed to make said loan of $1,000 to the above-named Corbin Banking Company as agent of said Weeth, and on June 14th, 1876, I received the mortgage note, abstract, and insurance policy on abovementioned land from said Corbin Banking Company, and paid to said company the full sum of $1,000.

3rd interrogatory. If you say you are the person who lent said money to said George Weeth, state how much you actually advanced to him.

38 3rd answer. I advanced to the Corbin Banking Company, which acted as agent for said George Weeth, the full sum of $1,000.

4th interrogatory. Who, if any one, applied to you for said loan on behalf of said George Weeth?

4th answer. General Francis A. Osborn, the treasurer of the Corbin Banking Company in Boston.

5th interrogatory. What rate of interest did you agree to take and receive on said loan?

5th answer. I agreed to take and receive 10 per cent. per annum.

6th interrogatory. What, if any, other or further agreement was made between you and this defendant as to any other or further interest than that expressed in the note and mortgage?

6th answer. No other or further agreement was made between me and this defendant as to any other or further interest than that expressed in the note and mortgage.

7th interrogatory. What knowledge, if any, had you at any time that any of the agents or brokers, or other persons connected with this loan in any way or manner, received, or agreed to receive, any more or greater rate of interest than that allowed by law for said loan?

7th answer. I had no knowledge whatever at any time that any of the agents or brokers, or other persons connected with this loan in any way or manner, received, or agreed to receive, any more or greater rate of interest than that allowed by law for said loan.

8th interrogatory. What, if any, knowledge had you at any time that any of the agents or brokers, or other persons connected with this loan in any way or manner, exacted, received, or agreed to receive, any bonus or commission on account of said loan?

8th answer. I had no knowledge at any time that any of the agents or brokers, or other persons connected with this loan in any way or manner, exacted, received, or agreed to receive, any bonus or commission on account of said loan.

9th interrogatory. What, if any, part of said bonus or commis-

39 sion have you ever received or agreed to receive?

9th answer. I have never received or agree' to receive any part of such bonus or commission whatever.

10th interrogatory. What amount did you actually pay out and advance on said loan, and at what rate of interest did you advance the same?

10th answer. I actually paid out and advanced $1,000, at the rate of 10 per cent. per annum.

11th interrogatory. What, if any, authority did you ever give any person to exact, receive, or agree to receive any other rate of interest than the rate allowed by law, or any bonus or commission, on account of said loan?

11th answer. I never gave any one authority to exact, receive, or agree to receive any other rate of interest than the rate allowed by law, or any bonus or commission, on account of said loan.

12th interrogatory. If any person acted as agent or broker for George Weeth, the defendant, in the matter of procuring this loan, state who the agent or broker was.

12th answer. The Corbin Banking Company acted as agent for George Weeth in this matter, and I had no dealings with the defendant directly, but only with his agent.

13th interrogatory. What, if any, intent had you in making said loan, or in any of the transactions respecting the same, to violate the laws of the State of New York or of the State of Nebraska respecting interest or usury?

13th answer. I had no intent in making said loan, or any of the transactions respecting the same, to violate the laws of the State of New York or of the State of Nebraska respecting interest or usury.

14th interrogatory. What, if any, intent had the defendant in respect to such violation of said laws, to your knowledge?

14th answer. I have no knowledge of the defendant's intent in respect to violation of such laws.

40 15th interrogatory. In fixing upon the rate of interest allowed by the laws of Nebraska in the note and mortgage in suit, what law had you reference to—the law of the State where the land was or the law of New York, where the notes were payable?

15th answer. The law of the State where the land was, viz, Nebraska.

16th interrogatory. State any other matter or thing of benefit to either party, as fully and particularly as if specially interrogated thereunto.

16th answer. The New England Mortgage Security Company, of which I was president at the date of above transaction, never received, desired, or expected, or agreed to receive any bonus, commission, or interest except that expressed in the note and mortgage, which was always within the limit allowed by the laws of the State wherein the land was situated; nor did this company, while I was president, ever employ any agents or brokers in any place whatever to invest its money or make loans for it, but all such loans were made by me as president.

HENRY SALTONSTALL.

Deposition of Charles L. Flint.

1st interrogatory. State your name, age, place of residence, and occupation.

1st answer. My name is Charles L. Flint; age, fifty-six; I reside in Boston, and am now president of the New England Mortgage Security Company.

2nd interrogatory. Please state whether you are the party or officer of the party who loaned to George Weeth $1,000 about May, 1876, secured on 160 acres of land in Sarpy County, Nebraska.

2nd answer. I was not president of the New England Mortgage Security Company until this year, nor was I the party nor an executive officer of the party who loaned to George Weeth $1,000 about May, 1876; I was, however, a director of the security company at that time.

3rd interrogatory. If you say you are the person who lent said money to said George Weeth, state how much you actually advanced to him.

3rd answer. I am not the person.

41 4th interrogatory. Who, if any one, applied to you for said loan on behalf of said George Weeth?

4th answer. No one ever applied to me for said loan to said Weeth.

5th interrogatory. What rate of interest did you agree to take and receive on said loan?

5th answer. I had nothing to do with said loan.

6th interrogatory. What, if any, other or further agreement was made between you and this defendant as to any other or further interest than that expressed in the note and mortgage?

6th answer. I make the same answer to this as to the last interrogatory.

7th interrogatory. What knowledge, if any, had you at any time that any of the agents or other persons connected with this loan, in any way or manner, received or agreed to receive any more or greater rate of interest than that allowed by law for said loan?

7th answer. I had no such knowledge at any time.

8th interrogatory. What, if any, knowledge had you at any time that any of the agents or brokers or other persons connected with this loan, in any way or manner, exacted, received, or agreed to receive any bonus or commission on account of said loan?

8th *question*. I neither have nor have had at any time any such knowledge.

9th interrogatory. What, if any, part of such bonus or commission have you ever received or agreed to receive?

9th answer. None whatever.

10th interrogatory. What amount did you actually pay out and advance on said loan, and at what rate of interest did you advance the same?

10th answer. I have no personal knowledge of this matter, but I find on referring to the books of the company that the full sum of $1,000 was paid out, at the rate of 10 per cent. per annum.

11th interrogatory. What, if any, authority did you ever give any person to exact, receive, or agree to receive any other rate of interest than the rate allowed by law, or any bonus or commission, on account of said loan?

42 11th answer. I had no hand in the matter whatever of any sort or kind.

12th interrogatory. If any person acted as agent or broker for George Weeth, the defendant, in the matter of procuring this loan, state who the agent or broker was.

12th answer. I have no personal knowledge of the matter beyond the fact that I find among the papers of the New England Mortgage &

Security Company a copy of the application of George Weeth, in which said Weeth says that the statements made in his application are true, are made by him to be used by the Corbin Banking Company as his agent in procuring the loan.

13th interrogatory. What, if any, interest had you in making said loan or in any of the transactions respecting the same, to violate the laws of the State of New York or the State of Nebraska respecting interest or usury?

13th answer. I did not make the loan.

14th interrogatory. What, if any, interest had the defendant in respect to such violation of said law to your knowledge?

14th answer. I know nothing of defendant's intent.

13th interrogatory. In fixing upon the rate of interest allowed by the laws of Nebraska in the note and mortgage in suit, what law had you reference to—the law of the State where the land was, or the law of New York, where the notes were payable?

15th answer. I know nothing of the matter, nor had I any hand in it.

16th interrogatory. State any other matter or thing of be'efit to either party as fully and particularly as if specially interrogated thereunto.

16th answer. I merely wish to state that the president of the New England Mortgage Security Company is the only officer who is empowered to make loans on behalf of said company, and as I was not president of the company when the loan to Weeth was made, about May, 1876, but only a director in the company, without any executive power, I can only
43 testify as to the loan in question from reference to the books of the company.

CHARLES L. FLINT.

I further certify that the foregoing depositions of Francis A. Osborn, Henry Saltonstall, and Charles L. Flint were then and there reduced to writing by me, in the presence of the deponents respectively, and to them by me carefully read over, and by them subscribed and sworn to respectively in my presence, after being so reduced to writing, and that the reason for taking such depositions was and is that the deponents, the witnesses, Francis A. Osborn, Henry Saltonstall, and Charles Flint, reside at Boston, Peabody, and in the State of Massachusetts respectively, more than one hundred miles from Omaha, State of Nebraska, where said civil cause is appointed to be tried.

I further certify that I am not of counsel or attorney to either of the parties to this suit, nor interested in the event of this cause; and that it being impracticable for me to deliver said deposition with my own hand into the court for which they were taken, I retained the same for the purpose of being sealed up by me, and speedily and safely transmitted by mail to the said court for which they were taken, and to remain under my seal entire until opened; that the fees for taking said deposition, $14.42, have been paid to me by complainant company, and that the same are just and reasonable for the service, and include witness fees and postage.

Given under my hand and official seal at Boston, this 27th day of August, in the year A. D. 1880.

[NOTARIAL SEAL.] FRANCIS PEABODY,
Notary Public.

Costs: 46 folios, $9.20; witness fees, 3.00; swearing witnesses, 1.80; postage, 42—$14.42. Received, Francis Peabody, N.

44 Circuit court of the United States, district of Nebraska, ss:

To Francis Peabody, Boston, Massachusetts, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine Francis A. Osborn, Henry Saltonstall, and Charles L. Flint on their corporal oath as witnesses in a cause depending in the circuit court of the United States for the district of Nebraska, wherein the New England Mortgage Security Company is plaintiff and George Weeth et al. are defendants, on the part of said plaintiff upon the interrogatories annexed to this commission; and therefore you are hereby commanded that, at certain days and places to be appointed by you for that purpose, you do cause the said Francis A. Osborn, Henry Saltonstall, and Charles L. Flint to come before you, and then and there examine them on oath upon the said interrogatories, and that you reduce such examination to writing, and return the same, together with the accompanying notice and interrogatories and this 'ommission, under your seal sealed up, and endorsed with the names of the parties litigant and the word "deposition" on the cover thereof, into the said circuit court at Omaha, Nebraska, to the clerk thereof, with all convenient speed.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this ninth day of August, A. D. 1880, and in the 105th year of the Independence of the United States of America.

Attest:

WATSON B. SMITH, *Clerk.*

In the circuit court of the United States, district of Nebraska.

THE NEW ENGLAND MORTGAGE SECURITY Company
vs.
GEORGE WEETH ET AL.

Notice of sueing out dedimus potestatem.

45 To the defendants in the above entitled cause and C. A. Baldwin, esq., their solicitor:

You, and each of you, are hereby notified that on the ninth (9) day of August, 1880, we shall sue out of the office of the clerk of said court, at 9 a. m. of that day, a dedimus potestatem, to be directed to Francis Peabody, jr., a notary public in and for the city of Boston, county of Suffolk, Commonwealth of Massachusetts, to take the testimony of Francis A. Osborn, Henry Saltonstall, and Charles L. Flint, upon interrogatories annexed hereto, and whereof a copy, with a copy of this notice, is herewith served upon you, such testimony to be used on the trial of the above entitled cause, on the behalf of the complainant.

Yours, very truly,

BROWN AND CAMPBELL,
Complainant's Solicitors.

We accept due and legal service on the above notice and interrogatories this 19th day of July, 1880.

C. A. BALDWIN,
Att'ys for Def'ts.

Interrogatories to be propounded to F. A. Osborn.

1. What is your name, age, place of residence, and occupation?

2. Do you know either of the parties to this suit; and if so, how long have you known them?

3. What, if anything, have you to do with the Corbin Banking Company of New York?

4. You may state what, if anything, you had to do with procuring a loan for the defendant, George Weeth, of one New England Mortgage Security Company, of $1,000, about May , 1876, secured on lands in Sarpy County, State of Nebraska, to wit, W. 2 NE. and W. 2 SE. 29, 14, 11.

5. If you had to do with said loan, state what you did, by whom you were employed to do what was done by you, and when so employed.

6. State whether said employment was in writing or verbal.

46 7. Look at the contract, a copy of which is here shown you (the original being attached to the deposition of defendant Weeth as Exhibit B, and this copy being sent by the examiner of said Weeth as a true copy), and state whether you were so employed under said contract attached to commission as B.

8. Look at the paper (the original whereof is attached to the deposition of said Weeth as Exhibit C, and this being the copy furnished by the examiner of court now shown you) attached to commission as C, and state what you did under said application and the contract mentioned in int. 7.

9. You may state whether you procured the said loan for said defendant, and what your services in that respect were reasonably worth at that time.

10. What, if any, compensation were you to receive for your services in and about said loan, by whom was such compensation to be paid, and when?

11. By whom was such compensation paid, if at all, and when and how?

12. What, if any, complaints were made by the def't as to the amount of such compensation or the manner of its payment until the suit was brought?

13. You may state what, if any, rate of interest was to be paid for said loan.

14. What, if any, knowledge had the mortgagee or the plaintiff at any time that you or any agent or broker or other person connected with the negotiation or procurement of said loan received or agreed to receive such compensation, or any compensation whatever?

15. State whether said mortgagee or complainant ever received or agreed to receive any rate of interest above 10 per cent. for or on account of said loan.

If you stated that you were employed to procure said loan, to whom did you make application for the money, and of whom did you obtain
47 it and at what rate per cent.

17. State whether you were employed by mortgagee or complainant to lend their money, and particularly this money.

18. State whether you or any person, so far as you know, intended in all or any of the transactions connected with said loan to violate the laws of the States of New York or Nebraska or any State on the subject of usury.

19. State, with reference to what law on the subject of interest you made or negotiated said loan, the laws of New York or Nebraska?

20. State whether the complainant or mortgagee ever received or agreed to receive, any part of the compensation for obtaining said loan.

21. State any other matter or thing of benefit to either party as fully as if specially interrogated thereunto.

BROWN & CAMPBELL,
Complainant's Sol's.

EXHIBIT B.

Whereas I have this day employed the Corbin Banking Company to negotiate for me a loan of $1,000 for a term of five years, with interest at the rate of ten per cent. per annum upon a note and mortgage securing the same, which shall be a first lien upon my farm in Sarpy County, Nebraska: Now, then, if they shall succeed in negotiating said loan within 30 days upon the usual conditions exacted by eastern money lenders as to security, perfecting title, insurance, &c., I agree to pay the said Corbin Banking Company the sum of $150, which shall be in full of their commissions and the commissions of those whom they employ to assist them in making said negotiation.

GEORGE WEETH.

MAY 12TH, 1876.

Value of property	$3,200 00
Amount of loan	1,000 00
Time	5 years.

Borrower's name and age, George Weeth, 46 years of age; wife's name, Ann.

P. O. address: Nasby, Sarpy Co., Neb.

48 1. What are the numbers of the land: W. 2 NE. 4th and W. 2 SE. 4th, 29, 14, 11 east, making 160 acres, in Sarpy County, Nebraska.

2nd. What is the size and material of the house? 16 by 28; pine.

And when built? 1871, 1 and one-half stories high; 16 by 16; wing 12 by 16; worth about $600; a good well.

3. What kind of a stable? Post and hay; cattle yard, hog pens, cribs, &c., of but little value.

4. On what part of land are the buildings? Near SE. corner of W. half, NE. 4th.

5. How many acres broken, how many fenced, and what kind of fence, and its condition? 115; 8 a.; hedge; 3 years old and in bad condition.

6. How many acres upland; slough? 160 upland.

Bottom land, timber, and quality of land? Good.

7. Has the farm any running water; show direction of streams on diagram? No.

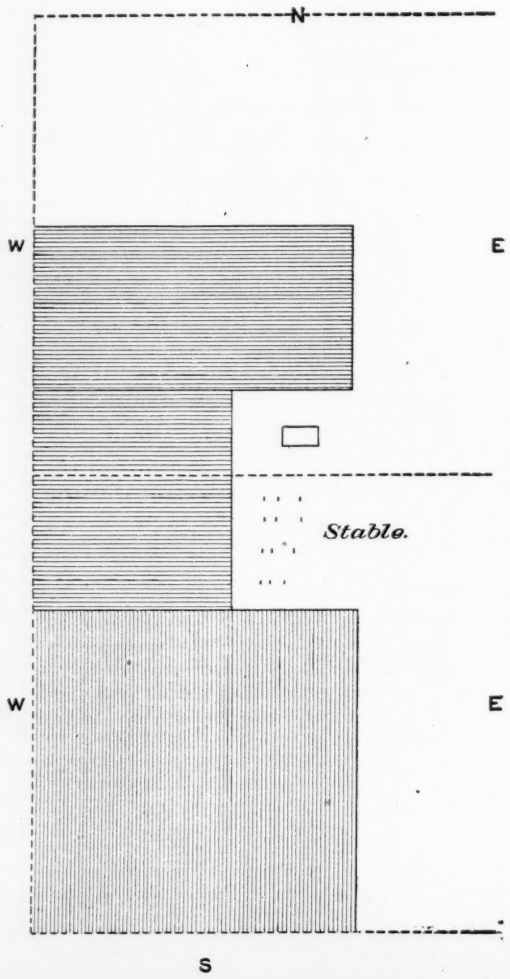
8. How many bushels and kinds of small grain raised on your place last year? State fully. 148 bushels wheat, 500 bus' oats, 200 corn; crops badly injured by grasshoppers.

9. Distance, name, and population of the nearest and usual market town? 9 miles; Papillion; about 800; county seat.

10. Distance, name, and population of nearest railroad station? 7 miles; Millard; 18, Omaha.

EXHIBIT C.

49



This diagram shows location of streams, buildings, and improvements; what is cultivated, sloughs, uplands, etc.

The statement made in the within application and in the supplement sent herewith to Austin Corbin are true, and are made by me to be used by him as my agent in procuring for me the loan described herein.

GEORGE WEETH, *Applicant.*

On the outside the following endorsement appears: Application loan No. 15868. Weeth. Negotiated by the Corbin Banking Co., 61 Broadway, New York.

Interrogatories to be propounded to Henry Saltonstall and Charles L. Flint.

1. State your name, age, place of residence, and occupation.

2. Please state whether you are the party or officer of party who loaned to George Weeth $1,000 about May, 1876, secured on 160 acres of land in Sarpy County, State of Nebraska.

5. If you say you are the person who lent said money to said George Weeth, state how much you actually advanced to him.

50 4. Who, if any one, applied to you for said loan on behalf of said George Weeth?

5. What rate of interest did you agree to take and receive on said loan?

6. What, if any, or other or further agreement was made between you and this defendant as to any other or further interest than that expressed in the note and mortgage?

7. What knowledge, if any, had you at any time that any of the agents or brokers, or other persons connected with this loan in any way or manner received or agreed to receive any more or greater rate of interest than that allowed by law for said loan?

8. What, if any, knowledge had you at any time that any of the agents or brokers or persons connected with this loan in any way or manner enacted, received, or agreed to receive any bonus or commission on account of said loan?

9. What, if any part, of such bonus or commission have you ever received or agreed to receive?

10. What amount did you actually pay out and advance on said loan, and at what rate of interest did you advance the same?

11. What, if any, authority did you ever give any person to exact, receive, or agree to receive any other rate of interest than the rate allowed by law, or any bonus or commission on account of said loan?

12. If any person acted as agent or broker for George Weeth, the def't, in the matter of procuring this loan, state who the agent or broker was.

13th. What, if any, intent had you in making said loan, or in any of the transactions respecting the same, to violate the laws of the State of New York, or of the State of Nebraska, respecting interest or usury?

14. What, if any, interest had the defendant in respect to such violation of such laws to your knowledge?

15. In fixing upon the rate of interest allowed by the laws of Nebraska in the note and mortgage in suit, what law had you reference to—the law of the State where the land was, or the law of N. Y., where the notes

51 were payable?

16. State any other matter or thing of benefit to either party as fully and particularly as is specially interrogated thereunto.

BROWN AND CAMPBELL,
Complainant's Sol's.

Upon the back of said deposition appear endorsements in words and figures following, to wit: No. 210 E, received September 22nd, 1880, and opened by order of court, Oct. 16th, 1880. Watson B. Smith, clerk.

In the United States circuit court, district of Nebraska.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
GEORGE WEETH ET AL. } 210 E. In equity.

In the circuit court of the United States, district of Nebraska.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
GEORGE WEETH ET AL. } In equity.

Testimony taken on the part of plaintiff and defendant, under the 67th rule of practice for the courts of equity of the United States, by H. Stull, examiner in equity, pursuant to consent of parties, Monday, June 28th, 1880, at Omaha.

Present, Mr. Brown, solicitor for plaintiff; Mr. Baldwin, sol. for defendants.

GEORGE WEETH, produced and sworn as a witness on the part of defendants, and examined by Mr. Baldwin, testified as follows:

Q. State your name, age, and place of residence.

A. My name is George Weeth; my age is fifty years, and I live in Sarpy County, Nebraska.

Q. Are you married or single?

A. I am married.

52 Q. Where were you born?

A. In Bavaria, Germany.

Q. How long have you lived in Nebraska?

A. I first came to Nebraska in 1858.

Q. State whether or not you borrowed some money of these plaintiffs.

A. Some time in June, I think it was, in 1876, I borrowed some.

Q. Do you know the name of the man from whom you borrowed it; was it J. R. Hyde?

A. Yes, sir.

Q. How long have you known Judge Hyde?

A. I knowed him about a month before I borrowed the money.

Q. State, if you please, the circumstances, and how you came to make the loan of the money here in controversy.

A. I was in his office making a copy of an account; I was the administrator of an estate, and I had not a correct account according to the proper form; and during the time that he was copying it, other folks came

in and asked him if he could loan them some money; and after he was through with me, and they had gone, I asked him if he was in that business.

Q. What business?

A. Loaning money; he said he was loaning money for eastern people.

Q. Now state what further conversation you had with him; give the details, if you please.

A. I told him I had need of some money, which I wanted to get to pay a mortgage and judgment; and he told me that they had a rule, the parties he was loaning for, to lend $850 on a $1,000 note, secured by mortgage on real estate the person was living on, improved property.

Q. Had you told him about the sum you wanted to borrow?

A. I told him I wanted to borrow $1,000, and he said he was only loaning $850 on a $1,000 note, and that would make about thirteen per cent.; they were charging ten per cent. on the note; I did not figure it.

A. After that what did you say further?

A. I wanted to give him a description of the land, and the where-
53 abouts of the house; and he said the party requested him to inspect it himself, and he could not take my testimony for that; and he went and hired a livery rig, and before we started out he told me to sign a piece of paper; I suppose it was that if I did not take the money I should have to pay for the livery.

Q. Did you sign the paper?

A. Yes, sir.

Q. Did you know what it was?

A. No, sir.

Q. How did you go out?

A. With a rig from Homan's stable.

Q. Who hired the rig?

A. Mr. Hyde brought it to his office and took me along.

Q. Who paid for the rig?

A. I don't know; I did not.

Q. State whether you agreed to pay for it.

A. No, sir; there was nothing said about it.

Q. Did you go out to the land?

A. Yes, sir.

Q. Where is this land situated?

A. In Sarpy County, about nine miles west of Papillion, and about 18 miles from here, between 18 and 19.

Q. What was done after he saw the land?

A. He said he would make out an application, and when I came in I should sign it. When I came in again he sent me a line to Papillion, and when the money came, I came to Papillion to meet him. He wrote me a letter.

Q. Did he meet you there?

A. Yes, sir.

Q. What was done there?

A. He brought the papers, the mortgage and note, and told me to sign it, and he paid the taxes, judgment, and mortgage, and gave me a check afterwards, when I came to Omaha for the balance.

Q. How much, if you remember, was the balance that he gave
54 you a check for?

A. I think it was $150.

Q. What was done with the balance of the $850 over and above the $150?

A. I don't know.

Q. What was it applied on, what debts did he pay for you?

A. He paid a note and mortgage that I owed to Byron Reed, taxes and judgment that was against the lands; there was about $150 balance to pay to make $850.

Q. How much money in all did he let you have, including what he had paid on your debts in cash?

A. All the money I received was $850.

Q. Did you receive anything else besides the $850?

A. Not a dollar.

Q. For what did you give this note and mortgage in controversy; for this $850?

A. Yes, sir.

Q. State whether or not at any time you employed him in any way directly, or indirectly, as your agent.

A. No, sir.

Q. State whether you paid him, or agreed to pay him, any amount for his services?

A. No, sir.

Q. How much have you paid on this claim, of this money?

A. About $248.05.

Q. State whether or not you are in the habit of transacting your business yourself, or confiding it to others.

A. I am a very poor scholar and never went to school. I can't do anything at that business; I have to depend upon others to do it for me.

Q. I now show you a paper attached to a former deposition in this case, marked Exhibit A, signed Homer Stull, examiner; I now inquire of whom you got that paper; what that paper is?

55 A. This is the paper that he showed me—how much the balance, how much the check was to be. Judge Hyde wrote this. He paid the rest. I did not make any inquiry. He just figured up the balance.

Q. Then I undertand you that is his statement?

A. Yes; or how he paid out the money. He was doing the business by himself. I placed confidence in him. I wanted things done so as to make the papers all right for him.

(Plaintiff offers in evidence the paper which has been referred to by the witness. It is hereto attached, marked Exhibit A.)

Q. Was this mortgage due—the mortgage to Byron Reed—at that time?

A. It was very near due. Byron Reed told me I must make preparation. I don't think it was quite due.

Q. I see $11.25 insurance; what was that?

A. Fire insurance. They insured the house for the company. It is the rule with money loaners.

Q. Who told you that?

A. Mr. Hyde. He said that was the way they done.

Q. This $11.25 was paid for insurance for the house as part of the security?

A. Yes, sir; if it gets burned down, instead of my looking for the money, they look for the money.

Q. Did you get it insured?

A. Yes, sir; for the benefit of the company.

Q. Do you know what company it was insured in?

A. It was in the same office, right back where Mr. Hyde was; Taylor, I think, was the agent.

Q. State whether Mr. Hyde required you to have it insured.

A. Yes, sir.

Q. Who first spoke about having it insured?

A. There was some one talking about the Farmers' Insurance Company; some one was saying if that was a sound company, and I asked Judge Hyde if it was.

56 Q. That is not my question; who first proposed to have your house insured, you or Judge Hyde?

A. Judge Hyde.

Q. Do you live on this land now?

A. Yes, sir.

Q. Where were you when you signed the note and mortgage?

A. In Papillion, in the treasurer's office.

Q. State whether or not you ever employed Judge Hyde to act as your agent, or ever paid, or agreed to pay him anything for getting this money.

A. No, sir.

Q. When did you first know that he was in the habit of loaning money?

A. The day when he copied the administrator's account for me.

Q. How did you come to learn it then?

A. There was other folks coming in and asking him if he could let them have some money. I did not pay attention to what conversation he kept with them, but after they was through I asked him if he was doing such business; he said yes, he was loaning money for eastern people.

Q. You say you paid about $248; when did you make the payment?

A. The first payment was made some time in December, the first year after I got the money. I got it in June, and the same year, about December, I paid the first coupon that was due on it, and then 200 dollars and some odd dollars afterwards, two years.

Q. Do you read the English language in writing?

A. There is a great deal I do not understand the words of. I could read a newspaper and get some meaning out of it, but to read for English people to understand is difficult.

Q. When you signed that first paper that Judge Hyde gave you to sign, state whether you signed it, or knew what it was.

A. I did not read it; I did not understand what it was; I suppose it was that if I backed out of taking the money, he could make me pay the livery.

Cross-examined by Mr. BROWN:

57 Q. Where did you first settle when you came to America?

A. In New York City, and stayed there over winter, and then came to Chicago. I came to New York City in 1847, to Chicago in 1848, and stayed there ten years, and then came up to Forrest City, Nebraska

State; was there a little over a year and went on this land—pre-empted this land.

Q. Then you have lived in America about thirty-three years?

A. Yes, sir.

Q. What business were you in in New York?

A. We were not doing business the first year. We had acquaintance there. He wrote for us to come over and it would be better than Europe, and we came over. The land was too high and too rocky, and mother said we wasn't old enough to farm yet, and we better stay in Chicago until three or four of us got to be stout men, and then go on a farm.

Q. How long did you live in Chicago?

A. Ten years.

Q. What business?

A. I was cooking in the Sherman House—me and my brothers.

Q. I am asking about you.

A. I was cooking in the Sherman House, and I kept a boarding-house three years myself.

Q. How old were you when you came to America?

A. About seventeen I guess.

Q. Now you say you are fifty?

A. Yes.

Q. Your testimony here to-day has been taken without any interpreter?

A. I guess so.

Q. Don't you know without guessing?

A. I did not see any; there is words in the language that I could not get any meaning out of.

58 Q. Did you understand the questions put to you by Mr. Baldwin?

A. Yes.

Q. You answered them right off?

A. Yes, sir.

Q. Will you swear, yes or no, whether there has been an interpreter or not?

A. There has been no interpreter; I did not see that there was anything that needed an interpreter.

Q. Did you go to school any between 1876 and 1878?

A. No, sir.

Q. Did you learn anything about the language in those years?

A. My children goes to school, and I am moderator, and I learn a good deal.

Q. You are the moderator of one of the English public schools?

A. Yes, sir.

Q. And have been since 1876?

A. Yes.

Q. What were you doing in Judge Hyde's office as administrator?

A. I was the oldest one and I was appointed as administrator according to the rules, and I had the things that was sold put down on a piece of paper, but it wasn't exactly the way the court wanted it.

Q. Who wrote it?

A. I did.

Q. Was it in English or in German?

A. It was in English, but it was not spelled proper; the court could not make out what it was, and wanted it wrote by somebody that knew how.

Q. You wrote your report as administrator in the English language?

A. Yes.

Q. You did not want to borrow this money at all?

A. O, yes; I needed it, because there was a judgment and mortgage to pay.

Q. Nobody forced you to borrow it?

A. Why, no.

59 Q. I want you to look at this paper now shown you, filed February 4th, 1878, in the former case of this plaintiff against you, on the same mortgage, purporting to be your answer, and state whether that is your signature.

A. Yes, sir.

Q. It purports to have been sworn to before Watson B. Smith; did you swear to it?

A. Who is Watson B. Smith?

Q. He is the clerk of the United States court.

A. This is my signature, and if the paper was brought before me I swore to it, of course.

Q. Did you understand it when you swore to it?

A. When it was read to me, yes.

Q. You understood it?

A. Yes.

Q. Who read it to you?

A. Who made it out?

Q. It is signed by Mr. Baldwin.

A. Mr. Baldwin read it to me.

Q. Look at this document purporting to be your deposition in the former case between the same parties, on the same mortgage, and state whether that is your signature.

A. Yes, sir.

Q. You understood the deposition when you signed it and swore to it?

A. Yes, sir.

Q. You think you learned considerable English between 1876 and 1878?

A. It lacks considerable yet of spelling words proper, but I can understand more in reading; I could not write a letter now.

Q. You could not spell right?

A. No; all a moderator has to do is to see what the amount of the check is, and what the check is for, and sign his name.

Q. Look at that paper and state whether it is your signature.

60 (Exhibit C attached to the former deposition of the witness on cross-examination.)

A. It looks like it.

Q. State whether it is or not.

A. Yes, sir.

(The paper referred to by witness is offered in evidence, and is hereto attached, marked Exhibit B.)

Q. Look at the paper now shown you purporting to be the application for the loan question, and state whether that is your signature subscribed thereto.

A. Yes, sir.

(The paper referred to by the witness is offered in evidence by the plaintiff, and is hereto attached, marked Exhibit C.)

Q. After you had your talk with Mr. Hyde, and before you got the money, you signed these two papers, did you not?

A. Yes, sir.

(The complainant objects to all the evidence in chief, as to the conversation between the witness and J. R. Hyde, as incompetent and immaterial.)

Q. Was the complainant, the New England Mortgage Security Company, present at any of those conversations between you and Mr. Hyde?

A. No, sir?

(The plaintiff here objects to all the testimouy in chief as to conversations between the witness and Mr. Hyde as incompetent and immaterial.)

Q. How many years before this did you make the mortgage to Byron Reed?

A. I think it was five years.

Q. Five years before 1876?

A. I guess it was not quite up, but it was getting pretty close.

61 Q. You understood that mortgage?

A. Yes.

Q. Is that the first one you ever made on the property?

A. I believe so.

Q. Was the judgment made against you upon a promissory note, or other written evidence of indebtedness?

A. It was because I put up some hay in Forrest City and burned around the stacks; and while it was burning around a little wind raised and run it down on some other stacks, and accident occurred, and that caused this judgment.

Q. Did you ever sign any other notes and mortgage beside these two?

A. I don't remember any judgments.

Q. Did you ever sign any notes?

A. Little notes; yes, sir.

Q. Did you sign any in Chicago?

A. No, sir.

Q. Did you own any real estate in Chicago?

A. No, sir; my mother did.

Q. Did you ever sign any deeds there?

A. No, sir.

Q. You sold a house there?

A. Yes; I sold to my mother again.

Q. You sold it without any writing?

A. Yes, sir.

Q. How do you know Mr. Hyde was agent for the plaintiff?

A. What do you mean?

Q. You said he was acting for eastern parties; how do you know, of your own knowledge, he was agent for the plaintiff?

A. When I was in his office getting accounts straightened up, other folks came in and asked him if he could loan them some money on real estate security; he said something, and I did not pay attention

62 particularly to what business they made; but I asked them after-

wards if he was doing that business, and they said yes; and he said so.

Q. Then you only know that he was agent of these plaintiffs from his say so?

A. Yes, sir.

(The complainant renews the objection to all this testimony-in-chief as to conversations with Mr. Hyde as incompetent.)

Q. Can you swear, of your own knowledge, that Mr. Hyde was anything more than the agent of the Corbin Banking Company to send them application for loans?

A. I don't understand your meaning; but all that I understood about it was, that he was loaning money for that company.

(The plaintiff objects to the answer as not reponsive.)

Q. Can you swear, of your own knowledge, that Mr. Hyde was anything more than the agent of the Corbin Banking Company?

A. From his say so.

Q. From your own knowledge, do you know he was agent any more than this—to forward the applications for the Corbin Banking Company?

A. That is all I know.

Q. He did not have the money there to give you, did he?

A. No, sir.

Q. You knew that your application had to be sent on East, didn't you?

A. Yes, sir.

Q. That is the application that is marked Exhibit C?

A. Yes, sir.

Q. Can you swear, of your own knowledge, that the plaintiff, or any of its officers, or agents, received agreed to receive, any part of this $150 commissions that you agreed to pay?

A. No, sir.

Q. Can you swear, of your own knowledge, that the complainant, or any of his officers or agents, ever knew that the Corbin Banking
63 Company, or Austin Corbin, or J. R. Hyde received, or agreed to receive, any commissions?

A. No, sir.

Q. Can you swear of your own knowledge that the complainant, or any of its officers or agents, ever received, or agree' to receive any greater rate of interest than that expressed in the note?

A. He told me that it would make it about thirteen per cent.; the note only called for ten.

Q. I am not talking about Mr. Hyde; state who you mean by he.

A. Mr. Hyde.

(The answer is objected to by the plaintiff as not responsive.)

Q. Can you swear of your own knowledge that the New England Mortgage Security Company ever received or agreed to receive any greater rate of interest than that expressed by the note and mortgage?

A. No, sir.

Q. Can you swear that they knew anything about the conversation between you and Mr. Hyde?

A. They did not; there was no one present but Mr. Hyde.

Q. This corporation is a Connecticut corporation, organized under the

laws of the State of Connecticut; can you swear of your own knowledge that Austin Corbin, or the Corbin Banking Company, took any commissions?

A. No, sir.

Q. Did you at the time that you borrowed this money intend to violate the law of New York on the subject of usury?

(Objected to by defendant, as the witness is not supposed to know what the law of New York was.)

A. No, sir.

Q. At the time of borrowing this money did you intend to violate the law of Nebraska on the subject of usury?

(Objected to as immaterial and irrelevant.)

A. No, sir.

Q. Can you swear of your own knowledge that the complainant,
64 or any of its agents or managers, intended to violate either the law of New York or the law of Nebraska on the subject of usury?

(Objected to by defendant as immaterial and irrelevant.)

A. No, sir.

Q. The account that you attached as an exhibit was rendered you by Mr. Hyde, as I understand?

A. Yes, sir.

Q. Did you object to it?

A. What account?

Q. The account of the disposition of the money.

A. The paper he gave me to show?

Q. Yes; did you object to it?

A. No, sir.

Q. You knew that $150 had been taken out of $1,000?

A. Yes, sir; it was agreed to on the paper, $850.

(The last part of the answer is objected to by plaintiff as not responsive.)

Q. You signed the agreement to pay the $150 for commissions; you signed the agreement?

A. No, sir; if there was any such thing I did not know it; I signed a piece of paper, but I did not know what the paper meant; I supposed it was for the livery hire.

Q. Did you in point of fact sign a paper?

A. Yes, sir.

Q. Can you swear that $150 was not appropriated by these agents, Mr. Hyde and the Corbin Banking Company, for their commissions under that agreement?

(Objected to by defendant as immaterial, whether they appropriated it or not.)

A. No, sir.

Q. Did you ever demand of any person the balance of the $1,000?

(Objected to as immaterial by defendant.)

A. No, sir.

Q. Did you ever bring suit for it against any person?
65 (Objected to as immaterial by defendant, and not required by law.

A. No, sir.

Q. Did you expect the Corbin Banking Company or A. C. Corbin to work for you for nothing?

A. No, sir.

(Objected to by defendant. There is no testimony shown that they ever did work for him.)

The WITNESS. I don't know what kind of an answer to make to that; the agreement was to get $850 for $1,000 and I supposed that was their style.

(The answer is objected to by plaintiff as not responsive.)

Q. Was that agreement you just spoke about in writing or verbal?

A. Verbal.

Q. Who made it?

A. Mr. Hyde.

(The testimony as to this agreement is objected to by plaintiff as incompetent.)

Q. Your written application that you have seen here to-day was sent on, was it not?

A. Yes, sir.

Q. Some time after that the money was obtained, was it not, and sent to you?

A. Yes, sir.

Q. You stated in your direct examination that this contract about commissions was not read over to you?

A. No, sir; it was not.

Q. Did you ask to have it read over to you?

A. No, sir; I did not think anything more about it. I thought it was to secure livery hire.

(The last part of the answer is objected to by plaintiff as not responsive.)

66 Q. Did you ask to have it read over?

A. No, sir; I had confidence.

Q. Can you swear that the plaintiff knew at any time that the paper was not read over to you?

A. Judge Hyde knew.

Q. I mean the plaintiff, the New England Mortgage Security Company?

A. No.

Mr. BALDWIN. Your attention has been called to two certain exhibits, B and C, by Mr. Brown in his cross-examination. State whether or not at the time you signed them you read and understood them.

A. No, sir.

GEORGE WEETH.

C. A. BALDWIN, a witness produced for defendant, being first duly sworn, testified as follows:

(Objected to by plaintiff on the grounds that there is no notice given as to this witness, and plaintiff's counsel declines to appear except for the purpose of making the objection.)

The WITNESS. My name is C. A. Baldwin. I am an attorney, practicing law, and have lived here for the last dozen years or more. I know Mr. Weeth and wife and Judge Hyde, and I am the solicitor for the Weeths in this case. As their solicitor and agent I called upon Judge Hyde at one time, for the purpose of finding out what became of this

$150—the difference between the money actually paid to Mr. Weeth and the amount of the note. Judge Hyde told me that he had—$50 went to himself and $100 to certain eastern parties. I don't know that I inquired who, but I know that he told me that he had $50, and the eastern folks $100. I know Weeth's manner of doing business. I know that he is in the habit of paying no attention to any paper or instrument of writing that is made and prepared for him to sign, except as he is instructed by those who are doing business. He has not much business capacity.

Cross-examined by Mr. BROWN:

Q. Can you swear of your own knowledge that the plaintiff ever
67 knew as to this agreement for commissions?

A. No further than this; that I was told that when the application was made it was forwarded for approval.

Q. I am asking you about your knowledge?

A. I was told by Judge Hyde that when the application was made the papers were forwarded and the money thereupon sent back.

(The answer is objected to by plaintiff as not responsive.)

Q. Can you swear of your own knowledge that the plaintiff had any knowledge of the commission contract or the receiving of the $150.

A. No further than that the papers were forwarded upon which that loan was made, and that those papers contain the fact.

Q. How do you know of you own knowledge that the papers were forwarded to them, the plaintiffs?

A. I only know by what Judge Hyde told me of the course in which the business was done.

(All the answers in chief of this witness are objected to as incompetent.)

Q. You spoke of certain eastern parties; did not Judge Hyde name the Corbin Banking Company as the parties to whom the application was forwarded?

A. Yes, I think so; I understood; I may be mistaken; but I understood it this way, that the business of the plaintiff was done through the Corbin Banking Company and Judge Hyde.

(The answer is objected to as incompetent and not responsive, the balance of the answer after the words "yes, sir.")

Q. Can you swear of your own knowledge that anything more than the abstract and this application marked Exhibit C was forwarded to the New England Mortgage Security Company by the Corbin Banking Company?

A. I cannot swear of my own knowledge that anything was ever forwarded to them. All I know of my own knowledge is from the papers and hearsay of the transaction.

Q. Can you swear of your own knowledge that the plaintiffs
68 ever had any knowledge of this carelessness or ignorance of Mr. Weeth in the matter of signing papers?

A. No, sir; only so far as they knew it through their agent.

(The answer from the word "only" is objected to by plaintiff as not responsive and not material.)

Q. Can you swear of your own knowledge that the plaintiffs ever had an agent?

A. No; only from pleadings they filed in the case, and from what I have learned from Judge Hyde in the matter.

(Complainants renew the objection to the testimony of this witness, and move to strike it out as incompetent. Defendant now offers in evidence, and gives notice that he will read in the hearing of this case before the court, the laws of New York relating to the matters of interest as they were at the time this money was loaned, and now published as authorized by their statutes. Objected to by plaintiff as immaterial.)

Here the defendants rest.

C. A. BALDWIN.

J. R. HYDE, a witness produced on behalf of the plaintiff, being duly sworn and examined by Mr. BROWN, testified as follows:

Q. State your name, age, residence, and occupation.

A. My name is Judson R. Hyde; my residence Omaha; my age is sixty-two; I have no occupation at present.

Q. What, if anything, had you to do with the Corbin Banking Company of New York in 1876?

(Objected to by defendant as immaterial and irrelevant.)

A. I was the agent for the Corbin Banking Company in 1876.

Q. What was their business?

(Objected to by defendant as immaterial and irrelevant.)

69 A. A portion of it at least was procuring loans for non-residents.

Q. What was your business in connection with them?

(Objected to as immaterial and irrelevant.)

A. My business was to take applications and forward to them applications for loans, preparing of abstracts, and forwarding to the Corbin Banking Company.

Q. Had you anything to do with procuring the loan for the present defendant, Weeth?

A. I took his application for the loan and forwarded it to the Corbin Banking Company; the loan was afterwards procured, and I paid the money to Mr. Weeth.

Q. Please commence at the beginning and state all you had to do with it, and all the conversations.

A. That would be pretty difficult to state all the conversations, but I can give the general substance. Mr. Weeth applied to me for the loan of $1,000; I told him I thought I could get it for him through the Corbin Banking Company. I told him the rate was ten per cent., but the banking company would charge him $150 for procuring the loan at ten per cent., five years' time. He said he was willing to give it; I then drew the contract, Exhibit B, and read it to him. He seemed to thoroughly understand it, and signed it; I also drew this application which he seemed to understand; at any rate I gave his answers in the application as he gave them to me. I told him at the time I did not know that we could procure the money, but that the banking company was to have thirty days to do it in. If they did do it in thirty days he was to pay that $150. I sent the application to the Corbin Banking Company; they notified me that they had placed the loan.

(Defendant objects to what the Corbin Banking Company said as incompetent and immaterial.)

The WITNESS. They returned the note filled out, and the mortgage filled also, and the money. I paid that money, with the consent of
70 Mr. Weeth, to Byron Reed, a portion of it, to relieve the lien that he had on the property; some was used to pay taxes, and a judgment was paid with his consent, and I gave him a check for the balance on the bank; the amount I don't remember now.

Q. You may state what, if any, objection he made to the disposition of money, and the account as rendered by you to him.

A. Not any; 'twas all perfectly satisfactory. It was talked over and agreed upon.

Q. What, if any, objection did he ever make to the retention of $150 commissions for procuring the loan?

(Objected to as immaterial and irrelevant.)

A. Not any.

Q. The defendant has spoken in his testimony of being in your office on some other business, and also said that he did not understand the English language very well; state what business he was there upon, if you recollect.

A. It has gone out of my mind now.

Mr. BALDWIN. He was administrator of his mother's estate, and he got you to make the account for him.

The WITNESS. He came there to have his account made up as administrator.

Mr. BROWN. Had he the account prepared already?

A. He had vouchers and an account, not prepared in a way to present to the court, but sufficient to enable me to go on and make the account.

Q. Did he seem to be an intelligent or stupid man?

A. He seemed to be an intelligent man. I thought he was not much of a business man, that is true, but I did not see anything to indicate that he was stupid.

Q. About finances, about dollars and cents, did he have it straight?

A. Yes, he seemed to understand it, but did not have it in shape to present to the court.

Q. His figures were all right?

A. Yes, sir.

Q. State whether or not the complainants had any knowledge of this agreement to retain or receive $150 commissions.

71 (Objected to as immaterial and irrelevant, and for the further reason that if their agent knew the fact, the principal is presumed to know it.)

A. I did not know that such a company as the complainant's was in existence at the time I made the contract. I never heard of it; so far as my knowledge is concerned, they did not know anything about it; I know they did not at the time I made the contract.

Q. Can you swear whether they ever accepted or received, or agreed to accept or receive, any portion of this commission?

A. I had no idea of who was going to furnish the money when I took the application; I expected the Corbin Banking Company to go on to the market and procure it.

Q. State whether in due time after the application was forwarded the money came for the loan.

A. It did, in the course of ten days, perhaps.

Q. Please state whether, to your knowledge, the complainant or any of its officers ever received, or agreed to receive, any rate of interest in excess of that expressed in the note and mortgage.

(Objected to by defendant, for the reason that it is immaterial whether the plaintiffs did, or not, if their agents received that amount.)

A. They did not receive any to my knowledge.

Q. The question is whether they received, or agreed to receive any greater rate of interest?

A. Not to my knowledge.

Q. State whether or no all your negotiations, as to the procuring of this loan, had between you and Mr. Weeth, were reduced to writing.

A. They were.

Q. State whether these exhibits B and C are those writings.

A. They are.

Cross-examined by Mr. BALWIN:

Q. In the spring of 1876, did you not advertise through the
72 papers a considerable amount of money to loan?

(Objected to by plaintiff as immaterial and irrelevant.)

A. I did.

Q. Were you not at that time loaning in this community considerable money for other parties?

(Objected to as immaterial and irrelevant.)

A. I was loaning for other parties; very little. I think that is the only loan made in this vicinity.

Q. I mean in Northern Nebraska; you was loaning in Northern Nebraska?

A. Yes, sir.

Q. Do you remember Mr. Weeth coming to you and making inquiry for money.

A. Yes, sir.

Q. When you loaned money for eastern parties, did you complete the contract at the time of the application, or take the statement of the parties desiring to effect the loan and forward it East for their determination?

A. I always perfected the loan myself, except in the case of the Corbin Banking Company. I did but little for them; I loaned more money for other parties.

(The question and answer are objected to by the plaintiff as immaterial.)

Q. When you did business for the Corbin Banking Company you always submitted the question to them whether or not they would accept the loan; is that the fact?

A. It is true in part; my business for them was to present applications for them to put upon the market, and if they found the money, or a party that would accept the application and make the loan, they notified me.

Q. So that when we sent out the application of Mr. Weeth, you were not certain that they would accept it; you waited for their answer before you knew?

73 A. Yes, sir.

Q. Did you not have to give an accurate detailed description of the real estate that they could pass upon?

A. Yes, sir.

Q. And you did in this case?

A. Yes.

Q. And when they accepted the proposition then they notified you and forwarded the money, is not that the fact?

(Objected to by defendant as irrelevant and as involving an assumption that is not true.)

A. I could answer that directly by giving you their letter, if I had not destroyed it. My impression is that their notice to me was that they had placed the loan and forwarded the mortgage and note, and, I think, a draft on New York. I am not sure whether I drew for the money or whether they sent me a draft.

Q. The note and mortgage were prepared in New York?

(Objected to as immaterial.)

A. Yes, sir.

Q. The money was forwarded to you?

(Objected to as immaterial.)

A. I can't say whether they forwarded me the money or whether I drew for it; but the result was I got the money.

Q. You paid the money to and for Mr. Weeth?

A. Yes, sir; $850.

Q. Did you pay him any other or greater sum than $850?

A. I did not.

Q. And for that $850 this note and mortgage was prepared in New York and forwarded to you with the $850.

(Objected to as immaterial.)

A. The note and mortgage was prepared for $1,000.

74 Q. For this $850 that you let Mr. Weeth have this note and mortgage of $1,000 was made in New York and forwarded here for his signature, was it not?

A. No, sir; that included $150 for the services of the Corbin Banking Company and myself. I stated distinctly that the $850 was all I paid to him.

Q. How much money did they actually send to you?

A. That I cannot tell you.

Q. Don't you know that they only sent you $900?

A. That I cannot say. I am willing to swear to this much, that I charged the Corbin Banking Company and they paid me $50.

Q. Will you swear that the Corbin Banking Company sent you more than $900?

A. I don't know; if they did I returned it.

Q. Will you swear that the Corbin Banking Company did not make an exhibit of the application to these plaintiffs?

A. I don't know whether they did or not.

Q. Do you know what became of the $100? You say you kept $50 of the $1,000; do you know of your own knowledge what became of the other $100? I ask of your own personal knowledge.

A. Nothing more than what the banking company told me.

Q. Will you swear that this $100 was not divided between the plaintiffs and their agents, the Corbin Banking Company?

(Objected to, as assuming that the Corbin Banking Company were the agents of the complainants, and as immaterial and irrelevant.)

A. I know nothing about it.

Q. I want to know if you remember at one time during the negotiations a talk with Mr. Weeth, after he signed that paper called a note or something for $150, of saying to him that all that was to avoid the appearance of usury; that that paper was given to avoid the appearance of usury?

75 A. There was no such conversation.

Q. What was done with this exhibit that he signed when he was let have the money?

A. That was sent to the Corbin Banking Company at the time I sent the application.

Q. Then it was returned to you?

A. Never returned to me.

Q. Then this paper for $150 was sent with the application to the Corbin Banking Company, to New York, when you sent on for the money?

A. Yes, sir.

Q. That paper was never returned to you?

(Objected to as immaterial and irrelevant.)

A. No, sir.

Q. Did you ever see that paper from that day until to-day?

(Objected to as immaterial and irrelevant.)

A. No, sir.

Q. Now, will you swear of your own knowledge that the application and that $150 paper was not presented to The New England Mortgage Security Company for them to pass upon, and upon which they let this money go?

A. I don't know anything about it.

Q. At whose instance was this house of his insured—Weeth's house?

A. I think he spoke to Mr. Taylor about insuring.

Q. Was it not a part of your instructions, that before loaning the money the man borrowing the money must insure for the benefit of the person who lends the money?

A. I think that is in the agreement.

Q. You say that you read over the $150 paper to Mr. Weeth, and Mr. Weeth says he never heard it read; are you willing to say to-day that you are not mistaken in the matter, and that perhaps you only explained to him without stopping to read it to him?

76 A. No, I am very confident in regard to that, because I made it a rule in these cases to read it distinctly to every one that signed it.

Q. Don't you know that Mr. Weeth is a man that knows very little about the manner of doing business?

A. I don't think he is a business man, by any means.

Q. Did you ever make any loan for this same plaintiff subsequent to this?

A. No.

Q. Was this the only loan you made for that company?

A. Yes, that is the only loan I ever made for the Corbin Banking Company; I never knew anything about The New England Mortgage Security

Company; I took a good many applications for the Corbin Banking Company which were rejected; my loans were made for other parties.

Q. Have you the means of telling, by reference to your books and papers, the amount of money received from the east on this loan?

(Objected to as immaterial.)

A. I think not; I can give you the reason if you want it.

Q. The balance of money that you paid to Mr. Weeth was by check on the Omaha National; would the books of the Omaha National show how much you received from the eastern parties on this loan?

(Objected to as indefinite.)

A. I don't think they would, I never received anything from The New England Mortgage Security Company.

Q. Where is this Corbin Banking Company doing business?

A. At No. 61 Broadway, New York; it was then.

Redirect examination by Mr. BROWN:

Q. How do you know the note and mortgage were prepared in the city of New York?

A. All I know about it is, that it came to me in an envelope from New York.

Q. You don't know but what a part of this $100 was divided
77 between the Corbin Banking Company, and The New England Mortgage Security Company; you don't know that the Mortgage Security Company ever got a cent of it, do you?

A. I don't know anything about it.

Q. You only know that the arrangement was according to writing; that $50 was to be paid as commission. State all you know about the disposition of the $150.

(Objected to as gone over in chief.)

A. I know nothing about the disposition of it, only from the Corbin Banking Company; all my correspondence was with them.

Q. Please state whether there was any disposition of the $150 other than that agreed upon in the written contract.

(Objected to as leading and improper.)

A. I don't know.

Q. You speak of this respondent as not being a good business man; is he not as good or a little better than the average farmer?

A. I can only answer that by saying I consider him a good, fair, intelligent farmer.

JUDSON R. HYDE.

GEORGE WEETH, recalled for defendant, and examined by Mr. BALDWIN, testified as follows:

Q. State what Judge Hyde said, if anything, during the negotiations for this loan about the reasons for giving this $150 paper?

A. He said that was the way they made out the papers, because that would bring it to about thirteen per cent., and they could not make it at that rate according to law.

Q. It required the $150 paper so as to avoid the law?

A. So as to avoid the law.

Cross-examined by Mr. BROWN:

Q. Before being recalled, had you a consultation with your solicitor, Mr. C. A. Baldwin?

A. Yes, sir.

78 Q. Do you remember distinctly the language used by Judge Hyde?

A. Yes, sir.

Q. Can you repeat it word for word?

A. That is the way that I understand it.

Q. Can you repeat it?

A. I could not say I could repeat it word for word; I could just get the meaning out of it; I could not talk like a man that is a lawyer.

Q. Can you repeat word for word what was said by Judge Hyde?

A. I don't know as I can.

(All the balance of his answer is objected to as not responsible.

GEORGE WEETH.

J. R. HYDE, recalled for plaintiff, and examined by Mr. BROWN, testified as follows:

Q. Were you present when the witness Weeth made his last answer?

A. Yes, sir.

Q. State whether you had any such conversation with the said witness?

A. I have no recollection of having any such conversation?

Q. What is your best recollection as to whether you did or not?

(Objected to because the question has already been answered.)

A. I have no recollection of making any such statement.

Q. State whether, or no, you are the agent of the Corbin Banking Company for this business of forwarding applications?

A. I am not.

Q. As I understand you, this is the only loan you ever made for the New England Mortgage Security Company.

A. Yes, sir.

JUDSON R. HYDE.

DISTRICT OF NEBRASKA, *ss:*

I, Homer Stull, examiner, duly appointed by the circuit court of the United States for the district of Nebraska, do hereby certify

79 that on the day named in the depositions hereto annexed I was attended by the counsel and witnesses aforesaid; that said witnesses were each by me first duly sworn and examined, and the said depositions were reduced to writing by me in the presence of the witness, respectively, and read to the witness, and by him subscribed in my presence; that Exhibits A, B, C, hereto attached, were introduced in evidence in said cause during the taking of said depositions.

HOMER STULL, *Examiner.*

My fees, $13.85, of which $3.50 have been paid by defendant.

Witnesses are entitled to fees as follows: George Weeth, one day and 24 miles travel; C. A. Baldwin, 1 day; J. R. Hyde, 1 day.

H. STULL, *Examiner.*

Attached to said depositions are exhibits in words and figures following, to wit:

EXHIBIT A.

P'd mortgage	$544 60
Judgment	$149 30
Tax	$29 50
Insurance	$11 25
Check	$110 35
	$845 00
Abstract & recording	$5 00
	$850 00

Defendant's Exhibit A.

HOMER STULL, *Examiner.*

Ex. A, June 28, '80.

80 EXHIBIT B.

Whereas, I have this day employed the Corbin Banking Company to negotiate for me a loan of $1,000 for a term of 5 years, with interest at the rate of 10 per cent. per annum, upon a note and mortgage securing the same, which shall be a first lien upon my farm in Sarpy County, Nebraska.

Now, then, if they shall succeed in negotiating said loan within 30 days, upon the usual conditions exacted by eastern money lenders as to security, perfecting of title, insurance, &c., I agree to pay the said Corbin Banking Company the sum of $150, which shall be in full of their commissions, and the commissions of those whom they employ to assist them in making said negotiation.

May 12th, 1876.

GEORGE WEETH.

Exhibit B; HOMER STULL, *Examiner.*

EXHIBIT C.

Value of property	$3,200
Amount of loan	$1,000
Time	5 years.

Borrower's name and age, George Weeth, 46 years of age; wife's name, Ann; P. O. address, Nasby, Sarpy Co., Neb.

1. What are the numbers of the land? W. ½ N. E. ¼, & W. ½ S. E. ¼, 29, 14, 11 east, making 160 acres in Sarpy Co., Neb.

2. What the size and material of the house, and when built? 1 & ½ story high, 16 by 16; wing, 12 by 16; pine; 1871; worth about $600; a good well.

3. What kind of a stable? Post & hay; cattle yard, hog-pen, cribs, &c., of but little value.

4. On what part of the land are the buildings? Near S. E. corner of W. ½ N. E. ¼.

81 5. How many acres broken, how many fenced, and what kind fence, and its condition? 115; hedge; 3 years old, and in bad condition.

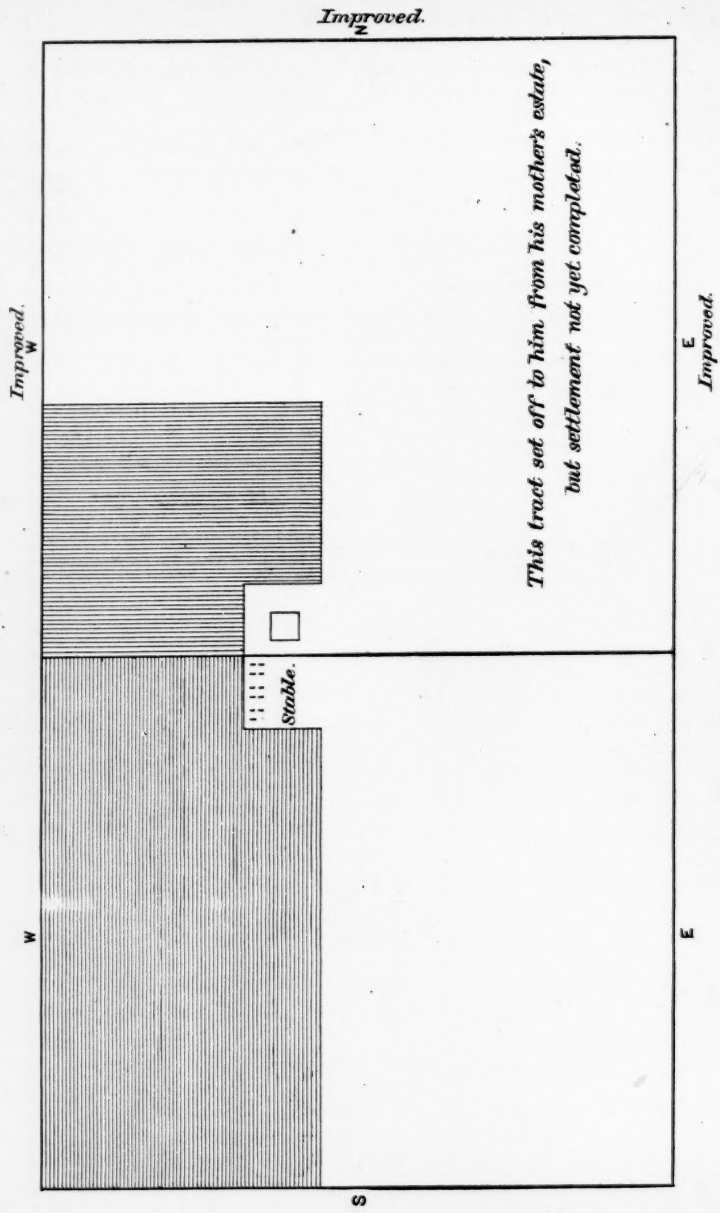
6. How many acres upland, slough, bottom land, timber, and quality of land? 160; good.

7. Has the farm any running water? Show direction of streams on diagram. No.

8. How many bushels and kinds of small grain raised on your place last year? State fully. 148 bu. wheat, 500 bu. oats, 200 corn; crops badly injured by grasshoppers.

9. Distance, name, and population of nearest and usual market town? 9 miles; Papillion; about 800; the county seat.

10. Distance, name, and population of nearest railroad station? 7 miles; Milliard; 18 miles; Omaha.


Improved.
N
Improved.
W
E
Improved.
This tract set off to him from his mother's estate, but settlement not yet completed.
Stable.
W
E
S

This diagram shows location of streams, buildings, and improvements; what is cultivated, sloughs, upland, &c.

82 The statements made in the within application, and in the supplement sent herewith to Austin Corbin, are true, and are made by me to be used by him as my agent, in procuring for me the loan described herein.

GEORGE WEETH,
Applicant.

Upon the back of said Exhibit C appear endorsements in words and figures, to wit:

Exhibit C, June 28, 1880. Application. Loan No. 15,868. Weeth. Negotiated by the Corbin Banking Co., 61 Broadway, New York. Received Nov. 8th, 1880, and opened by order of court Nov. 8th, 1880.
WATSON B. SMITH, *Clerk.*

Thereupon, afterwards, to wit, on the 8th day of November, 1880, a motion was filed in said case, which said motion is in the words and figures following, to wit:

In the U. S. C. C. Nebraska.

M. E. M. S. Co.
vs.
GEORGE WEETH. } No. 210. E.

The complainant moves to exclude the evidence of George Weeth as follows: all of page 2 and page 3 except last line; in all of page 4 except first five lines; all of page 5 and all of page 6 except the cross-examination on said page 6, as incompetent and immaterial; all the contracts and negotiations between the defendant and other parties as to the loan being in writing signed by the defendants as follows: from the cross-examination, and its appearing from the same that plaintiffs were not present, and had no knowledge of such conversations and meetings with said Hyde, and are detailed in the evidence in chief.

BROWN AND CAMPBELL,
Complainant's Solicitors.

Upon the back of said motion appear endorsements in words and figures following, to wit, 210 E. N. E. M. S. Co. vs. George Weeth, motion to exclude evidence filed November 8th, 1880. Watson B. Smith, clerk. Brown and C.

83 Thereupon, afterwards, to wit, Nov. 9th, 1880, a stipulation was filed in said case which said stipulation is in words and figures following, to wit:

United States circuit court, district of Nebraska:

NEW ENGLAND MORTGAGE SECURITY COMPANY,
complainant,
vs.
GEORGE WEETH ET AL., DEFENDANTS.

It is hereby stipulated and agreed by and between the said parties hereto

that the said defendants each and both of them will answer in this cause if called as witnesses that they never employed either the Corbin Banking Company of New York or Boston, or any of its officers or agents, or any other persons to act as agent for them or either of them in procuring the loan here sued upon.

That this whole transaction on their part was with J. R. Hyde, of Omaha, and it is agreed further that said George Weeth will admit and testify that he signed the application for the said loan marked Exhibit C, which is attached to his former deposition taken herein, as in said deposition he has stated; also that he signed the contract to pay the said Corbin Banking Company the sum of $150, which said contract is attached to his deposition herein as Exhibit B, and which were attached to the deposition of said Weeth in the first suit brought in this court on this claim.

BROWN AND CAMPBELL,
For Complainant.
C. A. BALDWIN, *For Defendant.*

(Endorsed:) E. 210. N. E. Mortgage Security Company vs. George Weeth et al. Stipulation. Filed Nov. 9, 1880. Watson B. Smith, clerk.

Thereupon afterwards, to wit, at the Nov. term of said court, and on the 18th day of November, the following proceedings were had in said case, as appears of record on folio 545, journal F, of said court, to wit:

Reference to master.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
GEORGE WEETH ET AL.

It is ordered by the court that this cause be, and the same is
84 hereby, referred to J. R. Webster, esq., one of the masters of this court, to report on the law and facts as shown by the pleadings and proofs herein.

Thereupon afterwards, to wit, Jan. 11th, 1881, master's report was filed in said case, which said report is in words and figures following, to wit:

United States circuit court, district of Nebraska. In equity.

Master's report.

NEW ENGLAND MORTGAGE SECURITY COMPANY, complainant,
vs.
GEORGE WEETH ET AL., DEFENDANTS.
No. 210. Doc. E.

To the honorable Geo. W. McCrary and Elmer S. Dundy, judges of said court:

In pursuance of a decretal order made and entered in the above en-

titled cause, and bearing date on the day of , A. D. 1880, at a stated term of this court, begun and held at the United States court-house, in in the city of Omaha, in said district, by which said cause was referred to John L. Webster, one of the masters in chancery of this court, to report to this court the law and the facts as shown by the pleadings and proofs, I, John L. Webster, a master in said court, do respectfully report that I have proceeded to investigate the matters so referred to me, and that pursuant to a notice duly issued I have been attended by the solicitors for complainant and defendants, and after careful examination and consideration I do find and report:

1. That in May, 1876, one J. R. Hyde, of Omaha, Nebraska, was the agent in Omaha of various Eastern parties for the loaning of money in Nebraska, among them the Corbin Banking Company, of New York, an institution doing business in the city of New York and having a branch house in the city of Boston.

2. That in May, 1876, said defendant, George Weeth, applied to said Hyde for a loan of ($1,000) one thousand dollars, proposing to
85 give as security therefor his farm, on which he then was and still is residing, in Sarpy County, Nebraska, and described as the west half of the northeast quarter and the west half to the southeast quarter of section twenty-nine (29) township fourteen (14), range eleven east, 160 acres.

3. That said Hyde examined the proposed security and filled out the usual application for such loan, which application was signed by defendant George Weeth, and that at the same time, about May 12th, 1876, defendant George Weeth, at the request of said Hyde, signed an agreement in writing authorizing said Corbin Banking Company of New York to negotiate and procure such loan for him, and constituting said banking company his agent for that purpose, and agreeing to pay said banking company the sum of ($150) one hundred and fifty dollars for its services in procuring such loan for him, and which application and agreement are printed forms used by said Corbin Banking Company for such purpose and were so in the hands of said Hyde as its agent.

4. That said application and agreement were forwarded by said Hyde to said Corbin Banking Company in New York, and by it said application was sent to its branch house in Boston; that said application was presented by the Boston house to the complainant on May 17th, 1876, and complainant agreed to accept the same and make the loan, and did pay to the Boston house of the said Corbin Banking Company the sum of ($1,000) one thousand dollars, which sum was by said Boston house placed to the credit of the New York house and the latter notified thereof.

5. That thereupon the New York house of said Corbin Banking Company prepared the note and mortgage, which are on file in this case, and forwarded the same to said Hyde at Omaha, with the sum of ($850) eight hundred and fifty dollars in money; that said note was signed and executed by defendant George Weeth at Papillion, Sarpy County, Nebraska, and said
mortgage was signed and executed by defendants, George Weeth
86 and Ann Weeth, at the same time and place, and the said sum of eight hundred and fifty dollars ($850) was paid by said Hyde to defendant George Weeth, and that the money was delivered to said defendant by said Hyde at the time of the executing of said note and mortgage,

and that the said note and mortgage are printed forms used by said Corbin Banking Company for such purpose.

6. That said note and mortgage, with the policy of insurance on the house of defendants in favor of complainant, were forwarded by said Hyde to the said Corbin Banking Company at New York, and through it were received by complainant about June 14th, 1876.

7. That said note and mortgage bear date May 18th, 1876, and are for the sum of one thousand dollars, payable in five years, with interest at the rate of ten per centum per annum, payable annually; that said note and mortgage run to complainant as payee and mortgagee, and that the said sum of one thousand dollars, when due, and the interest, when due, are by the terms of said note and mortgage made payable at the office of said Corbin Banking Company in the city of New York.

8. That said defendants received upon said notes and mortgage the sum of $850 and no more, and have paid upon the same, by way of interest, the sum of $248.

9. That said Corbin Banking Company reserved and retained the sum of $150 for the services of itself and said Hyde in this loan transaction.

10. That this action is brought by complainant to foreclose said mortgage on the ground of default in the payment of interest, and the defense pleaded is usury.

I find as conclusions of law and fact:

1st. That said Corbin Banking Company of New York and said
87 Hyde acted for and were the agents of the complainants in the transactions which went to make up the contract upon which this action is based, and that the complainant is therefore bound by the acts of said banking company and said Hyde in that regard; that neither said Corbin Banking Company nor said Hyde were the agents of the defendants in this matter.

2. That the procuring of the signing of the said paper by defendant George Weeth appointing said Corbin Banking Company his agent to procure this loan, was but a devise and attempt to avoid the appearance of usury, and was done for that purpose.

3. That this contract was made in the State of Nebraska, and must be governed by the laws of the State of Nebraska.

4. That the taking and reserving of $150 by said Corbin Banking Company as compensation for the procuring of this loan for defendants was in excess of the rate of interest agreed upon and expressed in said note and mortgage, and a higher rate of interest on the sum loaned than was allowed by the laws of the State of Nebraska; and the contract is therefor' usurious.

Fifth. That all the transactions as set forth in the pleadings and proofs in this cause had for the procuring and making of this loan were but one and the same contract, in which the complainant participated, and upon which it must stand or fall. I do therefore find and report that the complainant is entitled to a decree in its favor, and against the defendants, for the sum of $602, and that defendants are entitled to their costs. All of which is respectfully submitted.

JNO. L. WEBSTER, *Master.*

LINCOLN, NEBRASKA, *Jan'y 11th*, 1881.

Fees, $50.00.

88 Upon the back of said master's report appear endorsements, in words and figures following, to wit: 210 E. United States circuit court, district of Nebraska. In equity. New England Mortgage Security Company vs. George Weeth et al. Master's report. Fees, master, $50. Filed January 11, 1881. Watson B. Smith, clerk.

Thereupon, afterwards, to wit, January 13th, 1881, exceptions to master's report was filed; which said exceptions are in words andfigures following, to wit:

In the circuit court of the United States for the district of Nebraska.

THE NEW ENGLAND MORTGAGE SECURITY Company *vs.* GEORGE WEETH ET AL. } 210. E.

Exceptions to master's report.

Exceptions taken by the complainant to the report made herein by J. L Webster, one of the masters of this court, to whom this cause was referred by an order of this court duly entered herein, which report bears date January 11th, 1881.

1st. For that the said master, in his said report, and in the first finding, found that J. R. Hyde was the agent of the various Eastern parties for loaning money in Nebraska, among them the Corbin Banking Company, New York; for that the same is immaterial, and for that the said master should have found that the Corbin Banking Company of New York were doing business as loan brokers, and were subject to employment by any one who desired their services, and in this case was specially employed by the respondent, by a contract in writing, with signature of respondent thereto, being admitted by him under oath.

2nd. The complainant excepts to the 3rd finding of facts in so far as the same finds that the said defendant Weeth, at the request of said Hyde, signed the agreement set forth in said finding, the complainant here asserting that:

(A.) The matter of the request is immaterial and does not affect
89 the complainant.

(B.) The evidence shows that the matter was agreed upon between the said defendant and his agent that he should sign such contract.

3rd. To the fifth finding the complainant excepts, for that the same is immaterial: Complainant excepts to that part of the said finding from the words, "and that the said note and mortgage are printed forms used by said Corbin Banking Company for such purpose," as immaterial, and for that the said master should have not found or passed upon such questions, and for that there is no evidence to sustain such finding.

4th. Complainant excepts, fourthly, to the so-called conclusions of fact and law of the said master as a whole, for that the said master should have found and reported to this court his conclusions of law and facts separately, so that either party could clearly and definitely except to such findings of law or fact as advised by counsel.

5th. The complainant excepts, fifthly, to the first finding or the conclu-

sion of law and facts of said master, wherein said master finds that the Corbin Banking Company of New York and said Hyde were the agents of said complainants in the transaction which went to make up the contract upon which this action is based.

(A.) For the reason last above stated.

(B.) For that the said master should have found from the evidence that the said Hyde and said Corbin Banking Company were the agents of the respondent in the said transaction.

(C.) For that there was not any evidence whatever to sustain said finding.

(D.) For that the evidence clearly shows that the said Hyde and the said Corbin Banking Company were the agent of respondents.

6th. The complainant excepts, sixthly, to so much of said first finding so law and fact as states that the complainant is therefore bound by the fact of said Corbin Banking Company and said Hyde in that regard.

(A.) For the reason stated in the fourth exception.

(B.) And for that the same is not based upon any facts existing
90 or proved in this case, but upon the state of facts imagined by said master.

7th. The complainant excepts, seventhly, to that part of the said first so-called finding of law and fact as states that neither said Corbin Banking Company nor said Hyde were the agents of the said defendant.

(A.) Whereas the said master should have found upon the evidence that said last-named parties were the agents of respondent.

(B.) For that the said evidence shows plainly and indisputably that said parties were the agents of said respondents.

(C.) So far as respects the complainant and its knowledge of the relation of the parties, to wit, the Corbin Banking Company and Hyde to the respondent, the master should have found from the evidence that the said last-named parties, the C. B. Company and Hyde, were the agents of respondent, as he has already found in the fourth finding of fact, that only the application which in terms constitutes the C. B. Company the agent of respond' was forwarded to Boston and submitted to complainant.

(D.) And for that the said master should have found that the said C. B. Company and said Hyde were respondent's agents so far as complainant knew, and that the complainant neither knew of the commission paid nor received any part of the same.

8th. The complainant excepts, eighthly, to the second so-called finding of law and fact of the said master, for that the said master hath found "that the procuring of the signing of the said paper by defendant George Weeth, appointing said Corbin Banking Company his agents to procure this loan, was but a device and attempt to avoid the appearance of usury, and was done for that purpose;" whereas said master should have found—

(A.) From the evidence that the said Hyde and said C. B. Company were the agents of said respondent.

(B.) And that the complainant had no knowledge of said contract for commission and received no part of such commission.

(C.) And that the application exhibited to complainant, on the
91 faith of which it loaned said money, showed upon its face the agency of said C. B. Company for respondent.

(D.) And for that there is no evidence whatever to sustain the finding,

but, on the contrary, the evidence is directly to the effect that complainant in good faith advanced the full sum of $1,000 to the respondent, as is found by said master in his fourth finding of fact.

9th. The complainant excepts, ninthly, to the third so-called finding of law and fact, wherein said master finds that the contract was made in the State of Nebraska, and must be governed by the laws of the State of Nebraska; for that the said master should have found—

(A.) For that the contract is a Massachusetts contract, and governed by the law of that State.

(B.) Or that the same is a Connecticut contract, and governed by the law of that State.

Tenth. The complainant excepts, tenthly, to the fourth so-called finding of law and fact, wherein said master finds that the taking and reserving of the sum of one hundred and fifty dollars by said Corbin Banking Company as compensation for the procuring of this loan for defendant was in excess of the rate of interest agreed upon and expressed in said note and mortgage, and a higher rate of interest on the sum loaned than was allowed by the laws of the State of Nebraska, and the contract is therefore usurious; and that the said master should have found—

(A.) From the evidence that the said sum was paid as compensation to the Corbin Banking Company and its agents for procuring said loan pursuant to the written contract made by the respondent.

(B.) And for that said master should have found from the evidence that the complainant was innocent of any attempt to evade the usury law of any State, and only agreed to take lawful interest, and had no knowledge of the fact of the reception of commissions, and received no part thereof.

11th. And the complainant excepts, eleventhly, to the fifth so-called finding of law and fact, wherein the said master finds that all transactions as set forth in the pleadings and proofs in this cause had
92 for the procuring and making this loan, were but one and the same contract in which the complainant participated, and upon which it must stand or fall; whereas the said master should have found from the evidence—

(A.) That the contract to pay commissions to the Corbin Banking Company was one contract separate by itself, of which plaintiff had no knowledge or notice.

(B.) That the contract employing the Corbin Banking Company as respondent's agent attached to his application for the loan was another and different contract, and the only one brought to complainant's notice, and by which complainant in law was bound to take notice that the Corbin Banking Company were the agents of respondent.

(C.) That the finding is not sustained by the evidence, and the master should have found, as the evidence clearly shows that complainant had no knowledge of the commission contract and received no part of the said commissions, and that the whole commission was paid to and received by the Corbin Banking Company on New York, pursuant to the defendant's written contract; and the complainant now moves the court on the findings of fact numbers 3, 4, and 5, and the bill, answer, replication, and proofs and securities filed herein for a decree for the complainant as prayed in its

bill for the full amount of its debt, interest, and costs, notwithstanding the so-called finding of law and facts.

BROWN AND CAMPBELL,
Complainant's Solicitors.

Upon the back of said exceptions to master's report appear endorsements, in words and figures following, to wit:

No. 210. E. Circuit court U. S., dist. of Nebr. New Eng. Mortg. Security Company vs. George Weeth et al. Exceptions to master's report. Filed Jan. 13th, 1881. Watson B. Smith, clerk. Brown and Campbell, solicitors for complainant.

Thereupon, afterwards, to wit, Jan. 14th, 1881, exceptions to master's report was filed in said case, which said exceptions are in words and
93 figures following, to wit:

In the circuit court of the United States, district of Nebraska.

NEW ENGLAND MORTGAGE SECURITY COMpany
vs.
GEORGE WEETH ET AL.

Exceptions to report of master.

The defendants except to the report made herein by the honorable Jno. L. Webster, one of the masters of this court, for that the said master in his said report and in the fourth finding thereof finds the fact to be that said application was presented by the Boston house to the complainant on May 17th, '876, and that complainant agreed to accept and make the loan, and did pay over to the said Boston house $1,000, when, from the evidence, there being no conflict in the evidence, the master should have found the fact to be that the said application for the money was not presented to the complainant until June 14th, 1876, and nearly a month after money had actually been furnished by the New York branch of the Corbin Banking Company and paid to defendant Weeth.

2nd. That the said master in his said report and findings and in the fifth finding thereof finds that therefrom May 14th, 1876, as shown by preceeding findings, the New York house of said Corbin Banking Company prepared the note and mortgage which are on file in this case, and forwarded the same to said Hyde at Omaha, with the sum of $850 in money; whereas the master should have found from the evidence that the note and mortgage was made in New York by the Corbin Banking Company, and sent, together with nine hundred dollars in money, to Hyde in the month of May 18th, 1876, and that there the note and mortgage were signed and by Hyde returned to the Corbin Banking Company*ny*, N. Y., and on June 14th, 1876, said papers, together with the application for the loan, were presented to the complainant; that $850 of the money
94 so sent was paid to Weeth, and $50 thereof was paid to Hyde.

3rd. That on the sixth finding of this report the master finds that the note and mortgage, with a policy of insurance on the house of defendants in favor of complainant, and presented to the complainant June 14th,

1876, when the master should have found that the application for the money so signed by Weeth was presented to complainant at same time with the note and mortgage and policy of insurance, and that all of said papers were so presented after the contract for loan had been made—the money actually delivered to Weeth nearly a month.

IV. That the said master in his third findings and conclusions of law and fact found and concluded that the contract of loan was a Nebraska contract, and governed by the laws of Nebraska, when from the law and evidence he should have found it to have been a New York contract, and governed by the laws of New York. That the contract was not only upon its face a usurious contract, but that the proofs showed as well the payment of a bonus of $150 in addition to the usurious promise appearing on the note; that made the said contract of loan a wicked, usurious, and void contract, and that the complainant was not entitled to recover herein.

With great respect for the findings and conclusions arrived at by the learned master, when considered as pronounced in a court of equity, I submit that governed and determined by the laws as laid down by the vast preponderence of the authorities those findings of the master will be found erroneous to the extent herein claimed.

C. A. BALDWIN,
Sol. for Def'ts.

Upon the back of said exceptions appear endorsements in words and figures following, to wit:

210 E. Equity. N. E. M. Co. vs. George Weeth et al. Exceptions to master's report by defendants. Filed Jan. 14, 1881. Watson B. Smith, clerk; C. A. Baldwin, solicitor.

95 Thereupon, afterwards, at the May term of said circuit court and on the 2nd day of May, 1881, the following proceedings were had in said case, as appears of record on folio 17, Journal G, of said court, to wit:

NEW ENGLAND MORTGAGE SECURITY
vs.
GEORGE WEETH ET AL.

On this day this cause came on for hearing on the exceptions of plaintiffs and defendants to the master's report filed herein, and same were argued to the court by solicitors for the parties herein and submitted, and the court wishing for further time to consider same takes same under advisement.

Thereupon, afterwards, Nove. 21st, 1882, a stipulation was filed in said case, which said stipulation is in words and figures following, to wit:

NEW ENGLAND MORTGAGE SECURITY COMPANY
vs.
GEORGE WEETH ET AL.

In the circuit court U. S., of Nebraska.

DISTRICT OF NEBRASKA:

It is hereby stipulated that in the event of an appeal in this case the

same should be submitted to the Supreme Court upon printed argument under the rule of the Supreme Court providing for such submission during the first ninety days of this term, November, 1881.

S. E. BROWN,
Complainant's Solicitors.
C. A. BALDWIN,
Solicitor for Defen'ts.

Upon the back of said stipulation appear endorsements, in words and figures following, to wit: 210 E. Stipulation. Filed Nov. 21st, 1882. Elmer D. Frank, clerk.

Thereupon, afterwards, at the Nov. term of said circuit court and on the 21st day of November, 1881, the following proceedings were had in said case, as appears of record on folio 449, Journal G, of said court, to wit:

96 THE NEW ENGLAND MORTGAGE SECURITY Company
against
GEORGE WEETH AND ANN WEETH ET AL.

Decree.

This cause came on to be heard and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

On reading and filing the report of J. L. Webster, master in chancery of this court, which report bears date the 11th day of January, 1881, and was in pursuance of an order of this court, heretofore made in this cause, referring it to said master to report the evidence and his conclusions of facts and law thereon; and now, on the exceptions of complainant to said report, and arguments of counsel thereon, it is further ordered that a certificate of division be filed, and the stipulation of counsel herein be also filed, that the arguments and briefs of counsel in the Supreme Court of the United States, all of which is now and here done; and on motion of S. E. Brown, counsel for the complainant, it is ordered, adjudged, and decreed, and this court doth order, adjudge, and decree, that the said report, and all things therein contained, be set aside and not confirmed; and it is further ordered, adjudged, and decreed the said respondents pay, or cause to be paid, to complainant the amount hereinafter stated, together with interest from date of this decree, and costs, including $100 as attorneys' fee, to be taxed as costs, on or before the first day of January, 1882, and in default thereof that all and singular the mortgaged premises mentioned in the bill of complainant in this cause, and hereinafter described, or so much thereof as may be sufficient to raise the amount due complainant for the principal, interest, and costs in this case, and which may be sold separately without material injury to the parties interested, be sold at public auction, by or under the direction of Ellis L. Bierbower, special master, at any time after the said first day of January, 1882, provided that request for a stay of sale, as provided by the statutes of Nebraska,
97 is not made within that time; that the said sale be made at the north door of the United States court-house, in the city of Omaha,

State of Nebraska; that the said special master give public notice of the time and place of such sale, according to the course and practice of this court, and that the complainant or any of the parties in this cause may become the purchaser; that the said special master execute a deed or deeds to the purchaser or purchasers of the said mortgaged premises on the said sale, and that said special master out of the proceeds of said sale pay the costs thereof and the costs of this suit, and pay to said complainant, or his solicitor, the amount, to wit, thirteen hundred and fifty-three dollars and 87 cents due, and one hundred dollars attorneys' fee, together with interest thereon at the rate of ten per cent. per annum from this date, or so much thereof as the purchase-money of the said premises will pay of the same; and that the said special master take receipt for the amount so paid, and file the same with the clerk of this court, and that he bring the surplus moneys arising from said sale, if any there be, into court without delay, to abide the further order of this court; and it is further ordered, adjudged, and decreed that the defendants, and all persons claiming or to claim from or under them, be forever barred and foreclosed of and from all equity of redemption, and claim of, in, and to said mortgaged premises and every part and parcel thereof; and it is further ordered that the purchaser or purchasers of said mortgaged premises, at such sale, be put into possession thereof, and any of the parties to this cause, who may be in possession of said premises, or any part thereof, and any person who since the commencement of this suit has come into possession under them or either of them, deliver possession thereof to such purchaser or purchasers on production of the special master's deed for such premises, and a certified copy of the order confirming the report of such sale, after such order has become absolute. And it is further ordered and decreed that
98 if the moneys arising from said sale shall be insufficient to pay the amount so reported due to the complainant, with interest and costs and expenses of sale as aforesaid, that said special master specify the amount of such deficiency in his report of said sale, and that on the coming in and confirmation of said report, the complainant shall be at liberty to apply to the court for an order that the persons who were or are personally liable for the debt secured by the said mortgage pay to the complainant the amount of such deficiency, with interest thereon from the date of such report, and that the complainants have execution therefor. The description and particular boundaries of the property authorized to be sold under and by virtue of this decree, so far as the same can be ascertained from the mortgage and from the complaint in this cause, are as follows, viz: West half of the northeast and the west half of the southeast quarter in section twenty-nine (29), township fourteen (14), range eleven (11) E., Sarpy County, Nebraska. It is further ordered that an appeal be allowed. This decree is signed in lieu of the decree heretofore signed, and to correct errors therein, and is to be entered as of the date of the former decree and as a substitute therefor.

(Signed) GEORGE W. McCRARY,
Circuit Judge.

The judges of said court being divided in opinion on certain points, certify such division to the Supreme Court of the United States in manner

following, that is to say: Upon the trial of this cause the judges were divided in opinion upon the following questions, to wit:

1st. Whether the notes sued on were usurious.

2nd. Whether the master's report should in all things be sustained.

And at the request of the parties these questions are certified for the decision of the Supreme Court of the United States in pursuance of the statute in such case provided.

(Signed) GEORGE W. McCRARY,
Circuit Judge.

(Signed) ELMER S. DUNDY,
Dist. Judge.

November 21, 1881.

99 Thereupon, afterwards, to wit, on the 9th day of March, 1882, a bond was filed in said case, which said bond is in the words and figures following, to wit:

Know all men by these presents that we, George Weeth, as principal, and R. M. Carpenter and J. M. Rishel, as sureties, are held and firmly bound unto the New England Mortgage Security Company in the full and just sum of four hundred dollars, to be paid to the said The New England Mortgage Security Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this first day of March, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately, at a circuit court of the United States for the district of Nebraska, in a suit depending in said court between The New England Mortgage Security Company, plaintiff, and George Weeth & Ann Weeth, defendants, a decree was rendered against the said defendants, and the said defendants having prayed an appeal to the Supreme Court of the United States, which was allowed, and the said judges having differed in opinion, and having certified the matter of their difference to the said Supreme Court:

Now, the condition of the above obligation is such that if the said defendants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(S'g'd) GEORGE WEETH.
(S'g'd) R. M. CARPENTER.
(S'g'd) J. M. RISHEL.

Approved by—
(S'g'd) ELMER S. DUNDY, *Judge.*

(Indorsed:) No. 210 E. United States circuit court, district of Nebraska. New England M't'ge Sec. Co. vs. George Weeth et al. Bond. Filed March 9, 1882. S'g'd Elmer D. Frank, clerk.

100 Thereupon, afterwards, at the May term of said court, on the 3rd day of May, 1882, the following proceedings were had in said case, as appears on record on folio , Journal G of said court, to wit:

THE NEW ENGLAND MORTGAGE SECURITY Company
vs.
GEORGE WEETH ET AL.
} No. 210. E.

Whereas the solicitors for the respective parties did, at the November, term, A. D. 1881, enter into the following stipulation:

"It is hereby stipulated that in the event of an appeal in this case the same should be submitted to the Supreme Court upon printed argument, under the rule of the Supreme Court providing for such submission, during the first ninety days of this term, November, 1881,"

It is ordered that the time for the submission of said case be extended to October 1st, 1882, and the stipulation is amended accordingly.

(Signed) GEO. W. McCRARY,
Circuit Judge.

101 DISTRICT OF NEBRASKA, *ss:*

I, Elmer D. Frank, clerk of the circuit court of the United States for the eighth judicial circuit and district of Nebraska, do hereby certify that the foregoing folios, from 1 to , contain true and faithful transcripts of all pleadings and proceedings of record and on file in my office as said clerk, and the whole thereof, and the endorsements thereon, in the case of the New England Mortgage Security Company vs. George Weeth and others.

Witness my hand and the seal of said circuit court, at Omaha, this 2d day of May, A. D. 1882.

[SEAL.] ELMER D. FRANK, *Clerk.*

(Indorsement on cover:) No. 887. George Weeth and Ann Weeth, appellants, vs. The New England Mortgage Security Company. Nebraska C. C. U. S. Filed 24th July, 1882.

16-605

SUPREME COURT U.S.
FILED
OCT 17 1882
JAMES H. MCKENNEY, CLERK

No. .....

In the Supreme Court of the United States

GEORGE WEETH & ANN WEETH,
Appellants,
vs.
THE NEW ENGLAND MORTGAGE SECURITY COMPANY,
Appellees.

ON APPEAL FROM THE CIRCUIT COURT,
DISTRICT OF NEBRASKA.

ARGUMENT FOR APPELLANTS.

JOHN M. THURSTON,
For Appellants.

In the Supreme Court of the United States

GEORGE WEETH & ANN WEETH,
Appellants,
vs.
THE NEW ENGLAND MORTGAGE SECURITY COMPANY,
Appellees.

STATEMENT.

I.

This was an action brought by the appellees in the United States Circuit Court, District of Nebraska, to foreclose a mortgage that was made to secure a note given for $1,000, due in five years, with interest evidenced by coupons attached thereto, at 10 per cent per annum.

II.

The defense interposed is Usury.

III.

The amount of money actually paid to the appellants, and for which the note and mortgage were given, was $850, upon which from time to time they have paid $248. This is shown by the proofs, and is not controverted.

IV.

The appellants say that the contract of loaning was either a New York or a Nebraska contract; that if a New York contract and usurious, the whole amount, principal and inter-

est, is forfeited, the contract being void; that if it was a Nebraska contract, then by the laws of Nebraska if the contract was usurious, the appellees would be entitled to recover only the amount that was actually paid to appellants less any sums paid thereon, and the defendant would be entitled also to recover his costs. (See copy of Nebraska Statute, page 7 of printed Record.)

V.

The proofs were taken and the case was referred to the Hon. J. L. Webster, one of the Masters of said Court, to report on the law, and the facts as shown by the pleadings and proofs.

VI.

A hearing was had by the Master and his report thereon was made and filed in the case. (See page 57 of the printed Record.) The Master finds the facts to be—

1st. That in May, 1876, one J. R. Hyde was the agent in Omaha of various parties, for the loaning of money in Nebraska, among them the Corbin Banking Co. of New York, an institution doing business in New York, having a branch in Boston.

2nd. That in May, 1876, defendant, Geo. Weeth, applied to said Hyde for a loan of a thousand dollars, proposing to give real estate security therefor.

3rd. That said Hyde examined the proposed security and filled out an application for the loan, and at the same time, requested Weeth to sign an agreement in writing authorizing the Corbin Banking Company of New York to negotiate and procure such loan for him and agreeing to pay said Banking Company $150 for its services. That the said application and agreement *are printed forms used by said Banking Company for such purpose, and were so in the hands of said Hyde as its agent.*

4th. That said application and agreement were forwarded

by said Hyde to said Corbin Banking Company in New York, and by it forwarded to the branch house in Boston May 17th 1876, and that complainants, these appellees, agreed to accept the same and make the loan, and did pay to the Boston House of said Corbin Banking Company $1,000, which sum was by said Boston House placed to the credit of the New York House, and the latter notified thereof

5th. That the New York house of the Corbin Banking Company prepared the note and mortgage and forwarded the same to said Hyde, with the sum of $850. That the note and mortgage were signed by the Weeths at Papillion, Nebraska, and at the same time the note and mortgage were so signed, the money was paid to Weeth by Hyde. The note and mortgage are printed forms used by said Corbin Banking Company for such purpose.

6th. That the note and mortgage were forwarded by Hyde to Corbin Banking Company, New York, and received by complainants June 14, 1876.

7th. The note and mortgage bear date May 18, 1876, payable in five years, with interest at 10 per cent., and that the note and interest when due were by the terms of said note and mortgage, payable at the office of the Corbin Banking Company in New York.

8th. That the defendants received on said note and mortgage $850, and no more, and have paid thereon $248.

9th. That the Corbin Banking Company retained the sum of $150 for the services of itself and said Hyde.

VII.

So far the Master finds the allegations of the facts made in defendants' answer to be true, except in one particular as to the date (in his 4th finding) "May 17th, 1876," when he found the application was presented to the complainant by the Boston House of the Corbin Banking Company. In this particular the Master made a slight confusion as to dates of transac-

tions, to which the defendants filed exceptions. (See page 62 of printed Record.)

The proofs show, and it is agreed, that the note and mortgage were signed and the money paid to Weeth at Papillion, Nebraska, May 18th, 1876.

It will not therefore affect the point here sought to be made, even if the date were "May 17," for it would have been impossible to have sent the papers so they would be in Nebraska the next day, May 18th, as they were.

Henry Saltenstall, who was president of the complainant's company, says in his answer to second interrogatory, page 25 of the printed Record: "I agreed to make said loan of $1,000 "to the above named Corbin Banking Company as agent of "Weeth, and on June 14, 1876, I received the mortgage, note, "abstract and insurance policy on above mentioned land, from "said Corbin Banking Company, and paid to said Company "the full sum of $1,000."

So that we have the fact established from the lips of the President of the complainant's company: That on the 14th of June, 1876, the note and mortgage were presented to him and on that day he paid over $1,000. This proof coming from the source it does, can not be questioned. Then take the other facts, equally as well established, that the note and mortgage were signed and the money paid to Weeth May 18, 1876, and the fact can not be controverted that the Corbin Banking Company, New York, made the note and mortgage here sued upon, and made them payable to the complainants whose names are printed in the note and mortgage, and at their banking house in New York, sent the note and mortgage with $850 to Hyde, their agent, for Weeth to sign, and money to be and which was paid him nearly a month prior to the time the complainants paid over to the Boston house the money, as Saltenstall testifies.

VIII.

Upon these findings of facts the Master found:

1. That the Corbin Banking Company of New York and Hyde acted as the agents of the complainants in the transaction which went to make up the contract; that the complainants are bound by the acts of their said agents; that neither said Banking Company nor Hyde were the agents of defendants in the matter.

2. That the procuring of the signing of said paper by Weeth appointing the Corbin Banking Company his agent was a devise and attempt to avoid the appearance of usury, and was done for that purpose.

3. That the contract was made in Nebraska and is governed by the laws of Nebraska.

4. That the reserving the $150 as compensation for procuring the loan was in excess of the rate of interest agreed upon and was a higher rate of interest than is allowed by the laws of Nebraska, and that the contract is usurious.

5. That all the transactions as set forth in the pleadings and proof are but one and the same transaction in which the complainants participated and upon which it must stand or fall.

6. That the complainants are entitled to a decree for $602, &c

IX.

To this report the complainants except, and upon a division of opinion by the Court an appeal is allowed and the case is certified here. Upon the question—

1st. Whether the notes sued upon were usurious?

2nd. Whether the Master's Report should in all things be sustained?

ARGUMENT.

1. The first question submitted depends upon a solution and determination of the second question, *to wit:*

Whether the Master's Report should in all things be sustained?

As to the several findings of *fact* by the Master, there is no certified division of opinion by the Court. A careful reading of the testimony will satisfy the Court that there is but little conflict in the testimony and that the findings by the Master are supported by the proofs. Where there has been a finding of facts by a master to whom that duty was entrusted this Court will not interfere therewith, unless it shall be made to appear affirmatively that such findings are manifestly wrong.

Do the facts as found make the contract an usurious one?

If the contract was made in New York to be performed in New York, then it is a New York contract, and governed by the laws of New York, and void.

See Curtis *vs.* Leavitt 15 N. Y , 9, 227, 296.
Cutler *vs.* Wright 22 N. Y. 472, 480-9
Andrews *vs.* Pond 13 Peters 65, 78.
Slocum *vs.* Pomeroy 6 Cranch, 221.
Bell *vs.* Bowen 1 How. 169, 182.
Sand *vs.* Smith 1 Nebraska 108.
Miller *vs.* Tiffany 1 Wall. 298.

2. But if, as the Master finds it to be. it is a Nebraska contract, then it is governed by the laws of Nebraska.

The Supreme Court of Nebraska has repeatedly passed upon the question here involved, and there is no controversy as to what the rulings of that Court are and have been.

In a case recently decided in that Court, where the complainants here were complainants there, and all the facts nearly identical with the facts here, the transaction was held usurious.

See Olmstead *vs.* The New England Mortgage Security Co. 11 Nebraska 487, and affirming the decisions of same Court in
Philo *vs.* Butterfield 3 Neb. 259.
Cheeny *vs.* White 5 Neb. 261.
Cheeny *vs.* Eberhart 5 Neb. 423.
Cheeny *vs.* Woodruff 6 Neb. 151.

3. The Federal Courts in determining questions regulated by the laws of a State are as a rule inclined to adopt the construction given by the highest Courts of that State to that law; should this rule be followed here the result would be readily reached. The Nebraska Courts hold the transaction usurious.

4. An attempt is made on the part of the complainant to show that it did not have any knowledge of the payment of the $150 bonus, nor any part thereof.

But the proofs show that the Corbin Banking Company were entrusted by complainants with the responsibility of making safe loans of complainant's money and collecting the same; that they were entrusted and furnished with all necessary blanks for that purpose; that the Corbin Banking Company actually paid over the money to Weeth a month before it was furnished by the complainants.

The witness Osborn called by complainants, says (see printed Record, page 23, answer 14, integ.):

"*The plaintiff company's mortgagees had the general knowl-*
"*edge that the Corbin Banking Company were paid for their*
"*services, and did not exist for the amusement of the Company's*
"*officers and stockholders.*"

See 6 Nebraska 151, Cheeney *vs.* Woodruff.

5. The case of Condit *vs.* Baldwin 21 N.Y. 210, will be cited and relied upon ; but in this case there was but a divided opinion and as late as 1865 the question was again before that Court, (see 32 N. Y. 165, Bell *et al. vs.* Day *et al*) and again a minority of the Court dissenting, the case was affirmed only upon the principle of *stare decisis*, and is no longer regarded as authority.

See Tyler on Usury 170.

Armstrong *vs.* Toler 11 Wheat. 258.

Ins. Co. *vs.* Ely 2 Cow. 706, p. 8 of the opinion.

6. The complainants claim that the Corbin Banking Company of New York and Hyde were agents of Weeth. Weeth

swears they were not. But a paper is produced signed by Weeth; that the proof shows Hyde procured Weeth, a man who can not read English, to sign, appointing the Corbin Banking Company his agent, at the time he made his application, telling him that was the course to pursue "to avoid the law". (See Weeth's testimony page 50 Record).

Hyde when called and inquired of in relation thereto simply says "I have no recollection of any such conversation"

See page 51 Record.

It would be most remarkable for the complainants to intrust the placing of their money and the collection of the same in the hands of the agent of the borrower. That is not the way men do business. The Corbin Banking Company were as the Master found, the agent of complainants to make the loan and collect the same, and they made Hyde their agent to look at the security, search the records of the title thereto, and report the same to them, its value, situation, &c.

Everything that was done by the Corbin Banking Company and Hyde was in the interest, and for the protection of, complainants, and, that they were the agents of complainants should not be questioned.

It has been held that the authority to make a usurious loan will not be presumed when the agency is special and limited to a single transaction. But it is also held, however, that it will be presumed when the agency is general, and embraces the business of making, managing, and collecting the loans of a moneyed man.

See Rogers *vs.* Buckingham 33 Conn. 81.

The Corbin Banking Company were engaged in the business of loaning complainant's money and, as the proof shows, to that end and for that purpose, had in their possession blanks, coupon notes, and mortgages with complainant's

name printed therein ; * that they had blank applications for loans, as well as printed blanks to be used in appointing the Corbin Banking Company agents of the borrower in the hands of sub-agent Hyde, to be filled out, one set of which were used in this case. And the bank actually furnishing the money to Weeth a month before the complainants "placed to the Credit of the Corbin Banking Co." the $1,000 representing the loan.

The whole transaction, taken together, assumes this form : The New England Mortgage Security Company, as its name implies, is a moneyed association organized for the purpose of loaning money That they entrusted the placing of their money, and the collection of the same, in the hands of the Corbin Banking Company, requiring of the bank that their money should be safely placed, collected and returned to them with ten per cent. interest.

That complainants knew and understood that to do their business, make their loans, and collect their money, the Corbin Banking Company must be, and were, paid for their work so performed for complainants by deducting bonus money out of the sum loaned as was done in this case.

That by the laws of Nebraska this constitutes Usury.

That the findings of the Master in all things should be sustained, unless the Court find as Defendants claim, that it was a New York contract and void.

Is Respectfully Submitted,

JOHN M. THURSTON,

For Appellants.

---

*At the hearing before the Master the original notes, mortgage, and application, were in evidence, so that the Master could and did see the names of the complainants printed therein ; as that fact will not appear from the copying thereof into the transcript, the certificate of the Clerk to that fact is affixed :

"I hereby certify that the name of the New England Mortgage Security Company as payees, are printed in the notes and coupons attached thereto, as well as in the mortgage upon which this action is based. ELMER S. FRANK, Clerk,

By A. L. FRANK, Deputy."

16605

OFFICE SUPREME COURT U.S.
FILED
OCT 9 1882
JOS. H. McKENNEY, CLERK

EVENING POST JOB PRINTING OFFICE, 208 B'way, N. Y.

Supreme Court of the United States.

GEORGE WEETH ET AL.,
Appellants,

vs.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY.

No. 887.

Appeal from the Circuit Court of the United States, District of Nebraska.

Statement of Facts and Brief of Argument for the Complainant.

On the 12th of May, 1876, the appellant, George Weeth, signed an application for a loan set forth correctly on pp. 52–3, 4 and 5 of transcript as "Exhibit C," setting forth a description of his property and a diagram of the same, and stating that the statements thereof were true, and were made to enable Austin Corbin to obtain a loan for him as his agent. At the same time, the said Weeth made the contract, "Exhibit B," transcript, page 52, called a commission contract, by which he agreed to pay the brokers he employed, a fixed sum for their services, to wit, $150.

The application "C" was sent to the Corbin Banking Company, of New York. The loan not having been filled

16605

OFFICE SUPREME COURT U. S.
FILED
OCT 9 1882

EVENING POST JOB PRINTING OFFICE, 208 B'way, N. Y.

Supreme Court of the United States.

GEORGE WEETH ET AL.,
Appellants,

vs.

THE NEW ENGLAND MORTGAGE SECURITY COMPANY.

No. 887.

Appeal from the Circuit Court of the United States, District of Nebraska.

Statement of Facts and Brief of Argument for the Complainant.

On the 12th of May, 1876, the appellant, George Weeth, signed an application for a loan set forth correctly on pp. 52–3, 4 and 5 of transcript as "Exhibit C," setting forth a description of his property and a diagram of the same, and stating that the statements thereof were true, and were made to enable Austin Corbin to obtain a loan for him as his agent. At the same time, the said Weeth made the contract, "Exhibit B," transcript, page 52, called a commission contract, by which he agreed to pay the brokers he employed, a fixed sum for their services, to wit, $150.

The application "C" was sent to the Corbin Banking Company, of New York. The loan not having been filled

in New York, the said company sent the said application to the Corbin Banking Company, of Boston, whose treasurer, F. A. Osborne, presented the same to the complainant, which accepted the application and agreed to make the loan, and when the abstract, note, and mortgage were sent to it, paid over to the Corbin Banking Company, of Boston, the full amount of the loan, to wit, $1,000, and that sum was placed to the credit of defendant's agent, and the defendant received and accepted the same, less the commissions agreed upon. The lawful rate of interest was then 12 per cent. in Nebraska, and the loan was obtained at the rate of 10 per cent.

ARGUMENT.

The contention by defendant below was that the contract was usurious:

1st. Under the law of New York.

2d. Under the law of Nebraska.

I.

It is not usurious under the law of New York.

The only claim, or pretence of a claim, made below was that it was usurious, because the note was payable in New York.

Now, no form, shift or device will avail to cover usury—not even a judgment confessed, if it be confessed to secure a loan; so, *e converso*, no mere matter of form will make that vicious which otherwise was innocent. A New York loan

in fact would not be free from usury if the note was made payable in Nebraska; so a Nebraska loan is not usurious, if made payable in New York. The form is nothing; the essence of it all is to find out what the real contract between the parties was; what the real and true negotiation was. All that appears is that the defendant sent his application to complainant, and they advanced the money on the security he offered, in good faith, not receiving any more interest than the law allowed in Nebraska.

The short of the case is that the parties had the right to stipulate for the interest reserved by the law of Nebraska, and did so stipulate in the note, and the mortgage expressly provides that the contract is to be governed by the law of Nebraska.

See Transcript, page 11.

Having the clear right to so stipulate with a good intent, how foolish to form a bad intent, expressly to bring themselves under the ban of the New York statute.

The authorities are conclusive on the point that the parties may in good faith agree upon the rate of interest allowed by law in the State where the land is situated. And in this case, *both parties swear* that they had no intent to violate the law of *any* State; so the contract cannot be said to be amenable to the law of New York, on the subject of usury, though it may be true that as to protest, etc., etc., the law of the place where a note is made payable governs.

The following authorities are submitted as conclusive.

Arnold *vs.* Potter, 22 Ia., 224.

1. *Contract; Construction, Lex Loci:* The law of the place where the contract is made is to govern in enforcing and expounding it. *Aliter*, if the parties provide for its execution elsewhere; in which case it is to be governed by the law of the latter place.

2. —— ——: If a contract be made in one place to be executed in another, the parties may stipulate that it *shall be governed by the law of either.*

3. *Interest:* And if the rates of interest differ in the two localities, it is competent for the parties to agree upon the rate of either.

4. *Usury:* When the interest expressed is usurious, both by the law of the place where the contract was made and where it is to be executed, the law of the former place will govern as to the consequences of the usury.

See also as to *Lex Loci*, Dillon's Circt. Ct. Repts., vol. 1, pp. 443 *et seq.*, Geib *v*, Int. Ins. Co.

A resident of Texas borrowed money of a resident of Virginia, which was remitted by drafts to Texas and there used. To secure it, the borrower gave a sealed note, dated in Texas, and signed by two sureties, residents of Virginia. In a suit in Virginia on the note, held, that the contract was a Texas contract, and not subject to the usury laws of Virginia.

1877, Backhouse *v.* Seldon, 29 Gratt. (Va.), 581.

Upon a loan or mortgage, the fact that the agent of the lender retained a percentage as compensation for obtaining the loan, without the knowledge of the lender, does not constitute usury.

1877, *Manning* v. *Young*, 28 *N. J. Eq.*, 568.

Jones on Mortgages, sec. 659, p. 1.

The place of payment may, in the absence of any more controlling circumstances, be sufficient to show that the parties intended to refer this contract to the law of that place. But if the loan was actually made in another State, the money to be used there, the security given there, and if by that law the contract would be valid, and it would be invalid by the law of the place of payment, these facts may well be held to have a stronger influence in showing the intention, than the mere place of payment, and the rule itself resting upon that intention, where the intention is rebutted the rule should cease.

Sec. 661, p. 1.

The validity of a mortgage must, therefore, be determined by the law of the State where the mortgage land is, wherever the deed may be executed or the mortgage debt made payable.

See also 93 U. S., 344, Cockle *vs.* Flack.
Story on Conflict of Law, § 305, "A," 96 U. S., 269-270; 97 U. S., 13, see p. 23.

II.

The loan was not usurious under the law of Nebraska.

The principal argument to establish usury below was based upon the fact of the payment of $150 commission to the loan brokers who procured the loan for defendant under an express contract with him.

The authorities we submit below demonstrate the utter weakness of appellant's position. We first quote *in extenso* from the very learned and elaborate opinion of the Circuit Court of the United States for the District of Iowa, reported 7th Federal Reporter, page 737:

"HUBBARD & CLARKE, GATCH W. & W., O'CONNELL & SPRINGER.

CIRCUIT COURT U. S.

DISTRICT OF IOWA.

HENRY H. PALMER
vs.
ASA C. CALL.
Chancery. No. 969.

This is a suit to foreclose a mortgage. The only defense is usury. The note secured by the mortgage was for the sum of $11,000, executed by the defendant to the complainant, at Emmetsburgh, Iowa, on the first day of November, 1875, payable with interest at ten per cent. semi-annually on the 18th day of November, 1880, with a stipulation that if default should be made in the payment of interest the whole should, at the election of the holder, become due, etc.

It appears that Mrs. Maggie P. Davison, of Cook County, Illinois, placed in the hands of one A. C. Burnham, also living in that State, the sum of $10,000, authorizing him to loan the same for her on real estate security. Said Burnham was a member of the firm of Burnham, Ormsby & Co., bankers, of Emmetsburgh, Iowa.

Asa C. Call, the defendant, had applied to that firm to obtain a loan for him.

Shortly after the application was made Call met A. C. Burnham in Iowa, and they entered upon a negotiation for the loan. The result was that Call gave his note to Burnham for $10,000, with semi-annual interest notes of $500 each, and received through the house of Burnham, Ormsby & Co., the sum of eight thousand dollars, that firm retaining $2,000 as commissions out of the ten thousand dollars. The money loaned belonged to Mrs. Davison, but that fact was

not disclosed to Mr. Call, and the notes were taken in the name of A. C. Burnham.

The notes remained in the custody of A. C. Burnham subject to the control of Mrs. Davison, and were recognized by Burnham as her property. She received the interest, and was wholly ignorant of the fact that Mr. Call received any less sum than $10,000. She gave no authority to Burnham to loan the money at a greater rate of interest than ten per cent. per annum, or to take any bonus out of the sum loaned. She received no benefit from the usury, and had no knowledge whatever of it.

The plaintiff, Henry H. Palmer, a capitalist, residing in New Jersey, purchased the said $10,000 note, with five coupon notes attached, from A. C. Burnham, who endorsed it to him in September, 1873, paying for the same the full face value of ten thousand dollars in cash. The interest had been paid at maturity up to the time of the purchase, and the plaintiff had no notice of the usury in the original loan on which the notes were given.

The plaintiff did all the business in connection with the notes and mortgage through the house of Burnham, Ormsby & Co. He never saw the defendant, nor did any business with him in person. The plaintiff placed the notes in the hands of Burnham, Ormsby & Co. for collection of interest and reloan to Mr. Call.

The interest notes were paid at maturity to the plaintiff until November, 1875, when one of the coupon notes for $500 being due, the defendant, at the instance and request of Burnham, Ormsby & Co., entered into a new contract for the extension of the loan, by which he gave the plaintiff the said note for $11,000.

The plaintiff advanced and paid the sum of $1,000 in cash and surrendered the $10,000 note to the defendant. It seems that Burnham, Ormsby & Co. applied $500 of the cash payment to the payment of the coupon note then due, and without the knowledge of the plaintiff retained $500 as a bonus for effecting the new loan.

The plaintiff did not authorize the retention of the $500 bonus by Burnham, Ormsby & Co., received no benefit from

it, and, in fact, had no notice of it when he received the $11,000 note and mortgage.

For the Plainiff: O'CONNELL & SPRINGER and CRAWFORD & SOPER.
For the Defendant: GEO. E. CLARKE, HUBBARD & CLARKE and WRIGHT, GATCH & WRIGHT.

MCCRARY, *C. J.*:

It is well settled that, to make a loan usurious, there must be an intent on the part of the lender to take more than the legal rate of interest.

Tyler on Usury, 103.
Condit *vs.* Baldwin, 21 N. Y., 219.
Loyd *vs.* Scott, 4 Peters, 205.
U. S. Bank *vs.* Waggoner, 9 Peters, 309.
Jones *vs.* Berryhill, 25 Iowa, 289.

Doubtless, in general, the intent of an agent acting within the scope of his authority, may be imputed to the principal.

But it is settled beyond doubt that, if an agent in good faith makes a loan for another, and without the knowledge or authority of his principal, and for the agent's own benefit, exacts more than legal interest, the loan is not thereby rendered usurious. In such case the law does not impute the knowledge and the intent of the agent to the principal. This doctrine is supported by numerous authorities, both in England and this country.

Tyler on Usury, 156–172.
Dagnell *vs.* Wigley, 11 East, 43.
Solarte *vs.* Melville, 7 Barn. and Cres., 430.
Coster *vs.* Dilworth, 8 Cowen, 299, &c.
Condit *vs.* Baldwin, 21 N. Y., 219, &c.
Smith *vs.* Marvin, 27 N. Y., 137.
Bell *vs.* Day, 32 N. Y., 165.
Baxter *vs.* Buck, 10 Vt., 548.
Muir *vs.* Newark Savings Inst'n, 16 N. J. Eq., 537.
Conover *vs.* Van Mater, 18 N. J. Eq., 481 (3 Green, 481).

Rogers *vs.* Buckingham, 33 Conn., 81.
Hopkins *vs.* Baker, 2 P. and H. (Va.), 110 (2 Patton and Heath, 110).
Gokey *vs.* Knapp, 44 Iowa, 32.
Wyllis *vs.* Ault, 46 Iowa, 46.
The result summed up in 17 Albany Law Journal, 119, Barretto *vs.* Snowden, 5 Wend., 181.

I have the greatest confidence in the correctness and stability of this rule, from the fact that it rests upon solid foundations of reason and justice.

The lender employs an agent to loan his money. He gives the agent no authority to violate the law. He has no knowledge of the fact that usurious interest is extorted. He has no intent to receive, and does not receive, more than the law allows. He derives no benefit from the illegal transaction. But the agent and the borrower, without the knowledge, consent or authority of the lender, enter into an illegal contract for the payment of excessive interest. The borrower and the agent are the guilty parties. They knowingly violate the law. They are *participes criminis*, though it may be in unequal degrees. They knowingly put the lender's money in jeopardy without intending the least pecuniary advantage to him. It is the lender who is prejudiced and injured by such a transaction.

Would it not be most unjust to inflict pecuniary loss upon the lender who is without fault, and free from any illegal intention, in favor of a party who has knowingly and wilfully participated in the violation of the law? Would it be consistent with sound morality so to do?

What right has the borrower to assume or to believe that the lender's agent is authorized by his principal to violate the law by the taking of usurious interest? The lender's agent is either a special or a general agent. If he is specially empowered to negotiate the particular loan, and no other, it is the legal duty of the borrower to look to the special authority, and the principal is not bound beyond the special authority. If he is a general loan agent, the limitation is that he must keep within the usual and ordinary

scope of the business committed to him. The borrower must determine the extent of the authority by considering what is the usual and ordinary course of that business.

Is it within the usual and ordinary course for an agent to take excessive interest in violation of the law? Such a practice is *extraordinary*. It is *without* the usual course of business. The natural and proper inference for the borrower to draw from the fact of the agent's proposing to take illegal interest would be that, in so doing, he would be acting without the authority of his principal.

It may be said that the principal is responsible for the frauds of his agent in the course of the business committed to him, even though the principal should be ignorant of the fraudulent acts, or should expressly prohibit them. Very true; but in this case there are two innocent parties, the principal and the party defrauded. One of the two must needs suffer from the fraudulent acts of the agent, and it is the dictate of reason and justice that, where one or the other of these innocent parties must suffer, the loss should fall upon him who put it in the power of the agent to commit the fraud, rather than him who had no lot nor part in choosing the agent, or placing him in a position to do the mischief.

But in the case of usury contracted for through an agent, the borrower is not innocent. He participates knowingly in the violation of the law. He has no merit to plead in his defense, while the lender, in the absence of authority given by him, or knowledge of the violation of the law, is wholly innocent and entirely free from moral guilt. Indeed, it smacks strongly of fraud in the borrower to enter into a contract with the lender's agent to pay usurious interest without any inquiry whatever into the authority of the agent to make an unlawful contract which the borrower knows cannot be enforced; for in this way the borrower, in connivance with the agent, gets the lender's money with the intent, demonstrated by his subsequent plea of usury, to avoid the fulfillment of his contract.

Now, if the principle thus stated, which is so just in itself and so firmly supported by authority be sound law, it is decisive of the present case. For it is evident that neither Mrs. Davison nor the plaintiff had any knowledge whatever

of the retention by Burnham, Ormsby & Co., of the respective bonuses of $2,000 and $500. They did not authorize the usury. They received no benefit from it. They paid the full sums for which they respectively received the defendant's notes. If, therefore, it be granted as a fact that A. C. Burnham was Mrs. Davison's agent in making the original loan, and that Burnham, Ormsby & Co. were the plaintiff's agents in negotiating the second loan, it would make no difference in the decision of the question in this case.

The plea of usury must still be overruled. I cannot assent to the proposition of defendant's counsel, that in the original transaction A. C. Burnham was the lender of the money, because he failed to disclose his principal and took the notes in his own name. The money belonged to Mrs. Davison. A. C. Burnham was her agent in making the loan of it. They both treated the notes as the property of Mrs. Davison, and she received the interest upon them.

A. C. Burnham had, in fact, no real interest in the loan, except as trustee for Mrs. Davison. He would have lost nothing if a plea of usury had been sustained. The penalties would have fallen upon Mrs. Davison, and it is there fore her intentions and her acts, not the acts and intentions of A. C. Burnham, that are to be considered in determining whether or not the penalties of usury shall be inflicted. The act of an agent in taking notes upon a loan of his principal's money in his own name, does not make the agent the lender."

This, and the authorities cited therein, ought to be sufficient, but see, also,

U. S. Reports, S. C. 97, Otto (7), p. 23, Hotel Co. *vs.* Wade.

" Usury, certainly, is not to be favored ; but the rule is well settled, that when the contract on its face is for legal interest only, then it must be proved that there was some corrupt agreement, device or shift to cover usury, and that it was in full contemplation of the parties."

Bank of the U. S., vs. *Waggener*, 9. *Pet.*, 378.

also Kellogg v Miller 2d mc Cray 397

Gokey *vs.* Knapp, 10 Jurist, 635, 44 Ia., 32.

"1. Usury.—The complainant loaned the defendant money at ten per cent. interest, through an agent, who exacted a bonus for himself without the knowledge of his principal: *Held*, that the transaction was not usurious. Usurious commissions on obtaining a loan, taken by a third person without the knowledge or assent of the mortgagee, cannot taint the mortgage."

1878. Gray *vs.* Van Blarcom, 29 N. J. Eq., 454.
Cockle, *et. al.*, *vs.* Flack *et. al.*, U. S. S. C.; 93 Otto (3), p. 344.

"1. Where a commission merchant in Baltimore advanced to a pork packer in Peoria $100,000, for which he was to receive interest at the rate of ten per cent. per annum, and a fixed commission for the sale of the product, to be paid, whether it was sold by the commission merchant or not, it was properly left to the jury to decide on all the facts, whether or not the commissions were a cover for usury, or were an honest contract for commission business, in connection with use of money.

2. The express agreement of ten per cent. is not usurious, because lawful in Illinois, though not so in Maryland."
Andrews *vs.* Pond, 13 Pet., 65, reaffirmed.

[The same in vol. IV., *Central Law Journal*, p. 226.]

Nisbet *vs.* Gwinn, U. S. C. C., Iowa, 1875. Oral opinion per Love, *D. J.*, full bench.

Bingham *vs.* Myers, N. W. Rep., vol. 1, No. 10, p. 127, 51 Iowa, 397.

"Where an agent, without the knowledge or consent of his principal, takes a bonus or commission to himself beyond the legal rate of interest, the usury of the transaction does not affect the loan of the principal. Where the agent was the husband and the principal the wife, held, that knowledge on her part of the usurious character of a transaction in her

behalf could not be presumed from the relationship of the parties, as against their positive testimony to the contrary. A reasonable attorney fee, in case of foreclosure, stipulated in a mortgage, not shown to be usurious, may be allowed."

Wyllis *vs.* Ault, 46 Io., 47.

"1. Usury: Principal and agent. Where a loan is effected through an agent, the fact that the amount received by the borrower is less than that advanced by the principal and specified in the note, does not render it usurious in the absence of proof that the agent acted for the lender in retaining the sum which is deducted from the note.

2. ————: A separate note given by the borrower to the agent for his services in negotiating the loan, will not be tainted with usury where the agent acts for the borrower and not the lender."

Citations from Jones on Mortgages, second edition 1879, vol. 1, sec. 634, p. 3.

"Inasmuch as usury depends upon the intent with which it is taken, the court will look into the whole transaction to determine what the intent was, not only into the acts of the parties at the time of the transaction, but subsequently."

Esteves *vs.* Purdy *et al.*, 66 N. Y., 446.

"Where a lender has received a security providing for the payment of the precise amount loaned by him, with lawful interest, the fact that his agent, without his authority, knowledge or participation, has extorted from the borrower a sum of money upon the false pretense that a portion thereof was a bonus for his principal, does not taint the security with usury.

The employment of an agent to effect a loan does not impliedly or apparently authorize him to violate law or do an illegal act.

The fact that an action upon the security is commenced by the principal after knowledge upon his part of the exaction of the agent, is not a ratification thereof; the security coming to him unaffected by usury, he has the right to enforce it."

"After payment of a portion of the amount due upon a bond secured by mortgage, the obligors applied to the agent of the obligees for a re-loan of the sum paid upon the same securities. This the obligees agreed to. The agent exacted of the obligors $225, professedly for the obligees, who did not receive any portion of it, and knew nothing of the representation. One of the obligees was informed by the obligors, before the loan, of the terms their agent exacted, to which he replied that it was too much for the agent's services. The obligees loaned the full amount, and it did not appear that they knew how much was finally paid or agreed to be paid to the agent. *Held*, that the evidence rebutted any inference that the obligees connived at, consented to, or authorized the charge, and that, therefore, there was no usury."

Ins. Co. *vs.* Kashaw, 66 N. Y., 544.

"B and C were agents for the M. P. Life Ins. Co., for soliciting insurance, and had a desk in its office. Defendant Kashaw agreed to give B and C a bonus or commission of $3,000, to be paid by assigning certain small mortgages, for procuring a loan from said company of $7,000. The loan was obtained upon bond and mortgage, Kashaw receiving from the company the full amount of the loan. The small mortgages were assigned to the father of B, who was second vice-president of the company. The papers were drawn by its attorney, executed in his office, and put into its safe, and subsequently were assigned to it.

B's father, however, testified that he had no interest in the mortgages, but took the assignment in his own name at the request of his son, who was at the time of their execution absent, and that he was to pay to B the proceeds; that upon the assignment to complainant to receive credit for the full amount of the mortgages, and that prior thereto complainant had no interest in them. In an action to foreclose the mortgage given to secure the loan, *held*, (Church, Ch. J., dissenting), that the evidence failed to show that complainant was a party to the agreement for the bonus, or received any benefit therefrom, and so did not sustain the defense of usury."

Jones on Mortgages, sec. 642, p. 1.

"If the agent of the mortgagee, in making the loan, exact a payment to himself by way of commission for making the loan, the loan is not necessarily rendered usurious. The brokerage in excess of legal interest cannot affect the principal, when it is paid without his knowledge and he derives no benefit from it. It has been attempted, however, to establish the rule that such brokerage makes the mortgage usurious, unless it be taken by virtue of an independent agreement between the borrower and the broker. If, for instance, the borrower pays to the broker a premium in excess of legal interest, though the latter had been instructed by his principal to loan at lawful interest, and no part of the premium was received by the lender, but the borrower has no knowledge that it is all retained by the agent, the loan is considered usurious.

But the latest and best considered decisions affirm the rule as first stated. These decisions are based upon the principle that the agent did not, either expressly or impliedly, authorize the agent to do an illegal act; and, therefore, the wrongful act of the agent in extorting a bonus for himself does not affect the lender so long as he does not participate in the extortion or in the results of it, but seeks to enforce the security for the precise amount he loaned with lawful interest."

Sec. 643, p. 1.

"The burden of proof that the mortgage is usurious is upon the mortgagor. He is impeaching his own obligation formally executed under seal, and must establish the facts to constitute usury beyond a reasonable doubt. An even balance of testimony is not sufficient; there must be a clear preponderance. It is a defense not favored in equity; and especially when the consequence is to forfeit the whole debt the defense is considered unconscientious. When the penalty is a forfeiture of the illegal interest, or of all interest, even although the defense is not considered unconscientious, the rule of evidence, that the defense must be clearly made out, is applied both at law and in equity.

In a mortgage for purchase money, the fact that the sum